Supreme Court, U.S.
FILED

931887 MAY 26 1994

No. OFFICE OF THE CLERK

In The

# Supreme Court of the United States

October Term, 1993

JUAN M. MASINI SOLER,

*Petitioner,*

v.

THE OFFICE OF THE SOLICITOR GENERAL OF THE COMMONWEALTH OF PUERTO RICO AND THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO,

*Respondents.*

**Petition For A Writ Of Certiorari To The Supreme Court Of The Commonwealth Of Puerto Rico**

## PETITION FOR WRIT OF CERTIORARI

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May 25, 1994

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278 pp

## QUESTION PRESENTED

Petitioner's suspension or separation from the profession of law for engaging in direct mail solicitation, on the basis of disclosure requirements not previously established, violates his freedom of speech and due process rights.

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JUAN M. MASINI SOLER,

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v.

THE OFFICE OF THE SOLICITOR GENERAL OF THE COMMONWEALTH OF PUERTO RICO AND THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO,

*Respondents.*

**Petition For A Writ Of Certiorari To The Supreme Court Of The Commonwealth Of Puerto Rico**

## PETITION FOR WRIT OF CERTIORARI

Petitioner Juan M. Masini Soler respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the Commonwealth of Puerto Rico entered in *In re Juan M. Masini Soler*, Number AB-92-94, on December 10, 1993, and February 16, 1994.

## OPINIONS BELOW

The opinion of the Supreme Court of the Commonwealth of Puerto Rico is reported in 93 J.T.S. 160, and

appears as Appendix A. A timely motion for rehearing was filed by petitioner and was denied on January 20, 1994. A second timely motion for rehearing was filed with the Supreme Court of Puerto Rico and was denied by Resolution of February 16, 1994, reported at 94 J.T.S. 15, in which the Supreme Court expounds on its December 10, 1993 Opinion and Order. A final timely motion for rehearing was denied on February 25, 1994. The three (3) resolutions above mentioned appear as Appendices C, D, and E.

## JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Puerto Rico was entered on December 10, 1993. The last motion for rehearing filed with that Court was denied on February 25, 1994. This Court has jurisdiction to review the decision of the Supreme Court of the Commonwealth of Puerto Rico pursuant to 28 U.S.C. § 1258.

## STATUTE INVOLVED

**Canon 35. Candor and fairness**

The conduct of any member of the legal profession before the courts toward his clients and in his relations with his colleagues should be candid and fair.

It is not candid or fair to use means which are inconsistent with the truth nor should the judge be led to error by using guiles or a false statement of facts or of the law. It is improper to change or distort juridical quotations, or

to suppress parts thereof in order to transmit an idea contrary to that established by the actual context or to conceal one known to him.

A lawyer should deal candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes. To destroy documentary evidence or to facilitate the disappearance of attesting evidence in a case is also highly censurable. – Dec. 24, 1970, eff. Dec. 24, 1970.

## STATEMENT OF THE CASE

Petitioner, Juan M. Masini Soler, is an attorney admitted to practice at the Bar of the Commonwealth of Puerto Rico. The Supreme Court of the Commonwealth of Puerto Rico, applying Canons of Professional Ethics, which are essentially identical to the canons approved by the American Bar Association in 1908[1], suspended petitioner from

[1] Puerto Rico's Canons of Professional Ethics, approved in 1970, (*See* 4 L.P.R.A. App. IX) are an adaptation of the American Bar Association Canons of Professional Ethics approved in 1908. The developments in Professional Ethics has caused the approval of more modern and precise norms such as those contained in the Code of Professional Responsibility of 1969, the Modern Code of Professional Responsibility of 1981, and the Modern Rules of Professional Conduct of 1983. *See generally*, Morgan & Rotunda, *Selected Standards on Professional Responsibility* (1986). After *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), the Supreme Court of Puerto Rico amended Canon 36, regulating publicity or advertising by attorneys. The constitutional infirmity of the new Canon 36 has been pointed out in books and commentaries. *See e.g.* II Serrano Geyls, *Derecho*

the practice of law for a period of six (6) months, for mailing a letter to depositors with inactive bank accounts, offering his professional services for the recovery of such funds. *See* the letter in Appendix at pages 41-49. After petitioner had mailed his letter, his services had been retained by some recipients, and efforts had been initiated to recover the funds, an attorney representing one of the banks involved complained against petitioner, through a letter to the Solicitor General of the Commonwealth,[2] alleging a violation of the Canons of Professional Ethics number 34, and 36(g). After reviewing petitioner's response, as part of his preliminary investigation, the Solicitor General of the Commonwealth of Puerto Rico filed a Report at the Supreme Court, dated March 6, 1992, which concluded that "personal solicitation on the part of an attorney whereby the latter sends letters to potential clients to offer them his/her professional services, violate Rules 34 of Professional Ethics". Appendix at page 34. The Report also concluded that the letter sent to the depositors did not include "information about the feasibility of processing their claim personally and without the need to retain the services of an attorney", which

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*Constitucional de Estados Unidos y Puerto Rico*, 1440 (1988); Ramos de Szendrey, *Conducta Profesional*, 61 U.P.R. Law Rev. 961, 966, n.36 (1992).

[2] The Supreme Court of Puerto Rico has long claimed *original* and *exclusive* jurisdiction to regulate and adjudicate an attorney's admission to the bar and disciplinary proceedings in Puerto Rico. *See Ex Parte Boneta*, 39 P.R.R. 142 (1929); *Colegio de Abogados v. Fajaro*, 51 P.R.R. 512 (1937); *In re Pagan*, 71 P.R.R. 712 (1950). However, a complaint against an attorney can reach the Supreme Court directly, through the Office of the Solicitor General or the Bar Association of Puerto Rico.

allegedly constituted a violation of Rule 35 of the Canons of Professional Ethics "which provides that all attorneys must exercise a sincere and honest conduct in the performance of their legal profession". *See* Appendix at pages 34-35. Finally, the Report prayed that the Supreme Court of Puerto Rico take notice of the same and, "after the required processing, it provide as may be proper at law". No sanction was requested. *See* Appendix at page 35.

On May 4, 1992, petitioner filed in the Supreme Court of Puerto Rico a Reply to the Attorney General's Report claiming his constitutional rights to mail the aforesaid letter as guaranteed by the freedom of speech under Section 4 of Article II of the Constitution of the Commonwealth of Puerto Rico and the First and Fourteenth Amendments to the Constitution of the United States of America. *See* Appendix at page 79. In response to petitioner's reply, the Solicitor General Office filed a second Report dated June 18, 1992, which concluded, as the original Report, that since the letter failed to inform the depositor that he had the option to recuperate the funds "in person" and that it was not "necessary to retain a lawyer in order to claim the funds", the letter was deceitful and, therefore, the Supreme Court was not constitutionally barred from sanctioning petitioner. Appendix at pages 101 and 105. The Report prayed that the Supreme Court of Puerto Rico take notice of the same and "after the official requirements . . . provide as may be proper at law". *See* Appendix at pages 105-106. Again, no specific sanction was requested.

On December 10, 1993, the Supreme Court of the Commonwealth of Puerto Rico issued an Opinion and

Order[3] in which it acknowledged that petitioner's letter was protected by the First Amendment of the Constitution of the United States. The Court concluded that to sanction petitioner under Canon 34 of Professional Conduct "merely because [he] sent letters offering [his] services to people with inactive accounts would be an attempt against freedom of speech". Appendix at page 13. Nevertheless, the Supreme Court found petitioner in "flagrant" violation of Canon 35 which imposes on the lawyer an obligation to be sincere and honest, on several grounds.

> *First*, the *modus operandi* is not incidental but was skillfully planned – the impressive *Property Recovery Department* stands out – with the sole intent to profit from the unreasonable collection of one third [of the monies] in fees, in an inherently simple, *noncontroversial*, routine transaction. . . .

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[3] The Supreme Court of Puerto Rico did not follow the usual procedure for attorney disciplinary proceedings as provided in Rule 13 of the Rules of the Supreme Court of Puerto Rico. 4 L.P.R.A. App. I-A, Rule 13. The Court proceeded under Rule 13(e) ("Likewise it may impose the corresponding sanctions without need of further proceedings when facts justifying the imposition of sanctions arise from the answer itself"), which bypasses the requirement of Rule 13(h) for a hearing "to receive evidence on the complaint or petition for separation". The usual procedure is that, after receipt of the Solicitor's General Report and the attorney's answer, the Court may order that Office to file a complaint or petition for separation and schedule a hearing with all the panoply of due process protections. In this case, a complaint with formal charges or requesting a specific sanction was never filed.

> *Second*, the "legal notices" mailed – which are nothing more than letters offering their services – are inherently *misleading*. They lacked any reference to the fact that the funds involved were deposits in inactive bank accounts. By the same token, the preprinted, stereotyped form "CLAIM FOR REFUND UNDER OATH" – which was part of the letters – did not state the origin of the funds they promised to recover.
>
> And *third*, respondents . . . Masini Soler did *not* inform [his] potential clients that they *did not need the services of a lawyer* to recover the funds on deposit. To a lay person, the content of the letter gave a different impression. This final warning was *crucial* to keep the notices from being misleading because failure to include it could induce the addressees to believe that the legal services offered *were indispensable* for recovering the funds.

Appendix at pages 14-15.

The Supreme Court then ordered the separation of petitioner from the legal profession or practice for a period of six (6) months.[4]

On December 28, 1993, petitioner filed a motion for rehearing before the Supreme Court of Puerto Rico. In

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[4] Although the Judgment or Order of the Supreme Court of Puerto Rico stipulated that petitioner's separation from the practice of law would "begin when this Order becomes final and unappealable", the Court's administration and individual judges have precluded petitioner's practice since almost immediately after December 10, 1993. Petitioner has asked the Court to clarify the situation and the Supreme Court recently answered that Petitioner's suspension started on February 25, 1994.

view of the unanticipated order for separation for a period of six (6) months, petitioner invoked his rights under the due process clauses of the Fifth and Fourteenth Amendment of the Federal Constitution and required the Court to recognize under the Commonwealth Constitution at least the minimum guarantees recognized under the Constitution of the United States. *See* Appendix at page 174. The petition for rehearing was denied on January 20, 1994. A second motion for rehearing was filed on January 27, 1994, amplifying the arguments expounded in the original petition for rehearing. Appendix at page 194. This motion prompted the Supreme Court to issue a resolution dated February 16, 1994, which purported to explain and amplify the reasons for its original Opinion and Order. Appendix at pages 19-21. In this resolution the Supreme Court called petitioner's conduct "obviously lacking in sincerity and honesty", labeled petitioner's letter as "clearly misleading", and accused petitioner of "crafty behavior". Finally, the Court referred to petitioner as "patently dishonest" and proceeded to instruct the Clerk of the Court to publish the resolution.[5]

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[5] As a result of the Opinion and Order of the Supreme Court of Puerto Rico, the Federal District Court for the District of Puerto Rico issued an Order for petitioner to show cause why he should not be likewise disbarred from the Federal Court. On petitioner's request, the Federal Court stayed its proceedings pending the filing of this petition. *See In Re Ruffalo, supra,* where this Court denied Ruffalo's Petition for Certiorari from the state court disciplinary proceedings but then found a due process violation in those proceedings while reviewing Ruffalo's disbarment from the Federal Courts.

## REASONS FOR GRANTING THE WRIT

### I. Petitioner's activities are protected by the free speech clause of the First Amendment.

Petitioner's letter is clearly direct mail solicitation by an attorney protected as commercial speech by the First Amendment. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Counsel*, 425 U.S. 748 (1976); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); *Shapero v. Kentucky Bar Ass'n*, 486 U.S. 473 (1988). Petitioner's letter also clearly falls within the principal justification for the protection of attorney advertisement and mail solicitation as commercial speech, that is, the benefit for the consumer from the free flow of commercial speech which "performs an indispensable role in the allocation of resources in the free enterprise system". *Bates*, 433 U.S. at 364. *See also Peel v. Attorney Disciplinary Comm'n of Ill.*, 496 U.S. 91, 123 (1989) (O'Connor, J., dissenting, referring to facilitation of a consumer access to legal services as *the* policy reason for commercial speech protection of attorney advertisement and mail solicitation).

Petitioner's letter was directed to depositors of inactive bank accounts. The law requires that banks or financial institutions, with inactive accounts for a period of five years publish two notices in a newspaper of general circulation. 7 L.P.R.A. § 2101 *et seq.* If the amount deposited is not reclaimed by the consumer by December 10 of the year the notice is published, the monies are transferred to the Government. Over a period of two (2) years (1990-1992) more than three (3) million dollars had been

thus transferred.[6] Petitioner's letter offered his services by informing the consumers that they had funds that belonged to them and, therefore, falls within the principal policy reason for the protection of direct attorney mail solicitation.

## II. Petitioner was denied due process of law for his activities protected under the First Amendment.

Petitioner was grossly denied due process of law by the Supreme Court of Puerto Rico. No formal charges were filed or notified to petitioner and no specific sanctions were ever requested by the Office of the Solicitor General. Petitioner was not afforded a hearing as provided in the Rules of the Supreme Court of Puerto Rico that govern disciplinary procedure. None of the disclosure requirements imposed by the Supreme Court or the other reasons or justifications for his separation were previously established in Puerto Rican disciplinary law. Only one of those disclosure requirements was mentioned by the Solicitor General's Report as a reason for further proceedings against petitioner, to wit, the *alleged* failure to notify recipients that "they did not need the services of a lawyer to recover the funds on deposit", Appendix at pages 34-35. That disclosure requirement is not reasonable, fails to take into account specific language of the letter, has been specifically rejected by this Court as a reasonable disclosure requirement, and even if

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[6] Newspaper article in *El Nuevo Día*, Tuesday, August 25, 1992, page 83.

it were to be considered a reasonable requirement, it was not previously established by law, regulation or judicial decision and, therefore, could not justify separation from the practice of law under the due process clause of the Fifth and Fourteenth Amendments.

Thus, the question in this case is not whether commercial speech should be protected under the First Amendment, or whether such protection should be extended to attorneys, but whether once that protection has been afforded by this Court for many years, petitioner may be deprived of his livelihood by the drastic remedy of disbarment in violation of his right to freedom of speech and due process of law. The importance of this question for the evolving constitutional standards on attorney mail solicitation and advertisement is clear. This would be the first case heard by this Court in which the state disbars or suspends an attorney, for the exercise of his freedom of speech protected by the First Amendment. Previous cases, not involving personal solicitation, have only considered reprimands, censures or prospective obligations. *Bates*, 433 U.S. at 358 (censure); *In re Primus*, 436 U.S. 412, 414 (1978) (public reprimand); *In re R.M.J.*, 455 U.S. 191, 198 (1982) (private reprimand); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 627 (1985) (public reprimand); *Shapero v. Kentucky Bar Association*, 486 U.S. 466, 470-71 (1988) (denied petitioner's request for approval of letter); *Peel v. Attorney Disciplinary Comm'n of Ill.*, 496 U.S. 91, 93 (1990) (public censure).[7]

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[7] Indeed, it is the first time that the Supreme Court of Puerto Rico separates an attorney from the practice of law for advertising or mail solicitation. *See In re Ibarra Ortega*, 112 P.R.R.

As stated above, although no formal charges were ever filed, petitioner was notified in the Solicitor General's Report of March 6, 1992 and June 18, 1992, that the Office considered his letter a deceptive communication because of failure to notify recipients that "they did not need the services of a lawyer." In *Bates*, 433 U.S. at 382, this Court rejected the contention that an attorney advertisement was deceptive because it did not disclose that a name change could be accomplished by the client without the aid of an attorney on the grounds that "most legal services may be performed legally by the citizen for himself". This Court quoted one appellant's deposition in which he stated that "[i]t's not my job to inform a prospective client that he needn't employ a lawyer to handle his work". *Id.*, n.36. This does not seem much different from petitioner's statement that "there exists no obligation whatsoever to" inform potential clients that they may proceed personally.

Moreover, petitioner's letter contains language from which the recipient could deduce that the funds could be recovered personally. The letter refers to all "matters that

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541 (1982) (publication of an ad stating "Valentine Day's Special, Divorces, $100.00 + stamps", entailed a $300.00 fine.); *In re González*, 112 P.R.R. 536 (1982) (an ad containing a photograph of a young couple apparently annoyed and sitting at opposite sides of a table, and announcing divorces at $100.00, was misleading, promoted unnecessary suit, and was not reasonable, entailed a $300.00 fine.); *In re Valentín González*, 115 P.R.R. 92 (1984) (direct mail solicitation in cases dealing with workmen's compensation rights entailed censure.). The disturbing fact, however, about the history of attorney advertisement and mail solicitation in the Supreme Court of Puerto Rico is that the Court has always punished the attorneys' course of action.

the undersigned [the consumer recipient] could do in regards to the claim" and to "every necessary thing that the undersigned could do" with regard to the amount of funds indicated, *see* Appendix at page 47. This seems sufficient notice to anyone who takes time to read the letter that the services of an attorney need not be retained. The conclusion that petitioner's letter was deceptive is based on the assumption of a "naive and gullible"[8] consumer. In the particular circumstances of this case, depositors of funds in inactive bank accounts, that assumption is clearly overemphasized by the Supreme Court of Puerto Rico. Of one hundred and fifty (150) letters mailed by petitioner only thirty-five (35) were returned contracting his services. *See* Appendix at page 14. Therefore, close to seventy-five percent (75%) of the letter recipients chose not to retain petitioner's professional services. Given these figures it seems reasonable to presume that the letter recipients were perfectly aware that they "did not need the services of a lawyer." *See id.*, at 15. Regardless, petitioner was not afforded a hearing and the relevant facts for "determining whether the non-disclosure is misleading", were not developed. *Bates*, 433 U.S. at 382.

Furthermore, assuming the disclosure requirements mentioned above could be considered a reasonable requirement because its omission "created the potential for deception of the public", the Supreme Court of Puerto Rico's separation of petitioner for a period of six (6) months ignores the admonishments of a unanimous

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[8] *See* Resolution of February 16, 1994, Appendix at pages 19-21.

Court in *Zauderer v. Office of the Disciplinary Counsel*, 471 U.S. 651, 653, n.15 (1985). There this Court, "given the reasonableness" of the disclosure required by the Supreme Court of Ohio, approved a decision to issue a public reprimand for failure to make such disclosures. But this Court unanimously indicated that for a state to actually disbar[9] an attorney on the basis of disclosure requirements that had not been previously established "would raise significant due process concerns". *Id.; In re Ruffalo*, 390 U.S. 544 (1968).

Petitioner was not notified and had no opportunity to address or present proof regarding any other reasons or justifications adduced by the Supreme Court of Puerto Rico for his separation. *See* pages 6-7, *supra*. He could not know that he was being charged with collection of excessive fees because he was never charged with a violation of Canon of Professional Conduct number 24. *See* 4 L.P.R.A. App. IX, Canon 24 (fixing the amount of the fee).[10] Similarly, the objection that the letter "did not state

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[9] It is our understanding that there is no difference, for purposes of the free speech and due process clauses, between an indefinite disbarment and a separation of the practice of law for a fixed period. The havoc that such drastic measures causes on the private practice of an attorney is undistinguishable. Particularly, when in ordering such a measure the Supreme Court publishes resolutions and opinions referring to the attorney as "crafty", "patently dishonest" and "lacking in honesty".

[10] In any case, in view of the relatively small amounts deposited in inactive bank accounts, it is highly questionable whether a contingent fee of one-third violates Canon 24 or justifies such a drastic sanction as disbarment.

the origin of the funds [he] promised to recover",[11] page 6, *supra*, is a disclosure requirement imposed after the fact, and clearly overlooks the fact that petitioner's letter was to offer professional services; it was not a notice to the consumer that he or she had certain funds that could be claimed. As stated in *In re Ruffalo*, 390 U.S. at 551-552, "the charge must be known before the proceedings commence . . . ", since the "absence of fair notice as to . . . the precise nature of the charges deprive[s] petitioner of procedural due process." This is particularly true when applying such an unprecise statute as Canon 35. *See* Wolfram, *Modern Legal Ethics*, 85-87 (1986); Kaufman, *Problems in Professional Responsibility*, 667-668 (3rd ed. 1989). Of course, the arguments stated above apply, *a fortiori*, to the Supreme Court's attempt to strengthen its untenable position in its February 16 Resolution.[12] *See* Appendix at pages 19-21.

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[11] Although the letter did not indicate the location of the funds, it is unlikely that the consumer will fail to identify the nature and location of the funds once reminded of their existence and of the amount involved. As indicated before, out of 150 notices mailed by petitioner only 35 retained his services. It is more reasonable to assume that the other 115 recipients proceeded to withdraw their monies or reactivated their accounts, than to presume that petitioner's letter was ignored. Of course, petitioner was given no opportunity to present proof on this point.

[12] Indeed, the Supreme Court of Puerto Rico's attempt to explain its Opinion and Order in its February 16, 1994 Resolution, by indulging in further after the fact charges and justifications never previously notified to petitioner, dramatizes the grievious violation of petitioner's free speech and due process rights.

Petitioner's letter is not a criminal offense "traditionally known as *malum in se*", nor is it "conduct which all responsible attorneys would recognize as improper for a member of the profession." *See In re Ruffalo*, 390 U.S. at 555 (White, J., concurring in result). It is, on the contrary, at least, conduct as to which its appraisal reasonable men may differ, "not one immediately apparent to any scrupulous citizen who confronts the question". *Id.* Therefore, the separation of petitioner by the Supreme Court of Puerto Rico clearly violates his due process and his speech rights.

## CONCLUSION

The issue presented in this case is of great importance to the administration and application of Rules of Professional Ethics for attorneys across the nation. The eventuality that this Court anticipated in *Zauderer*, a separation of an attorney for disclosure requirements imposed after the fact, has come to pass. Thus, this petition affords this Court an opportunity to clarify the limitations that the due process clause of the Fifth and Fourteenth Amendments imposes on a state that wishes to disbar or suspend an attorney for failure to comply, in a mail solicitation protected by the First Amendment, with disclosure requirements not previously established by law, regulation or judicial decisions.

Furthermore, the attempt by the Supreme Court of Puerto Rico, in matters of its original and exclusive jurisdiction regarding attorney's professional ethics, to create a doctrinal enclave of sorts within the United States, free

from the restraints of due process and the First Amendment, should be rejected. After *Bates*, applying general and unprecise Canons of Ethics and having always reprimanded and/or fined an attorney who advertises or solicits clients through the mail, the Supreme Court of Puerto Rico now escalates its sanctions arsenal to disbarment, in violation of the most basic guarantees of due process of law. The decision below will chill all attorney advertisement and mail solicitation in Puerto Rico as effectively as a blanket prohibition provided by regulation. The exercise of the supervisory powers of this Court, is necessary to remedy the situation for, after all, the free speech and due process clauses of the Constitution of the United States "fully apply to Puerto Rico". *El Vocero de Puerto Rico v. Puerto Rico*, 113 S. Ct. 2004, 2005, n.1 (1993). For these reasons it is respectfully requested that a writ of certiorari be issued.

Respectfully submitted,

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May 25, 1994

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## APPENDIX A

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

*In re*

Attorneys José R. Franco Rivera and Juan M. Masini Soler — No. AB-92-24

JUSTICE NEGRON GARCIA delivered the opinion of the Court.

San Juan, Puerto Rico, December 10, 1993

I

Attorney Ismael H. Herrero, Jr., complained to the Solicitor General about the conduct of attorneys José R. Franco Rivera and Juan M. Masini Soler, charging them with violations of Canons 34 and 36 of the Canons of Professional Ethics.

He explained that he represented the Banco de Santander de Puerto Rico and the Santander Federal Savings Bank. Both banks are required by law to publish inactive account lists in the newspapers, indicating the name and address of the depositor, the account number, the amount on deposit, and the branch. According to Herrero, Jr., Franco Rivera and Masini Soler separately[1] used this information and mailed a letter to the depositors offering

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[1] In his reply, Masini Soler explained that "there does not now exist nor has there ever existed any professional, commercial or business relationship, etc., between [him] and Atty. Franco Rivera."

Curiously, except for the names and addresses, the plan and printed matter are identical.

their professional services. The letter, which consists of a flyer, the top of which can be detached, bears the name and address of the depositor. It reads:

> File No. _____
>
> LEGAL NOTICE
>
> Our *Property Recovery Department has discovered funds that belong to you.*
>
> If you are interested in recovering them, sign THE CLAIM FOR REFUND UNDER OATH before a Notary Public and mail it as soon as possible so that we may proceed to file a claim in your name. Make a copy for yourself before mailing the original.
>
> Yours truly,
>
> _____, Esq.
> [Name of Attorney].
>
> (Underscore supplied.)

The so-called *Claim for Refund* – the bottom part of the document – has the letterhead of the lawyer and records under oath the name of the claimant, depositor or owner of the funds; that the person is of legal age and legally competent to sign it, and the following preprinted, stereotyped language:

> That the property recovery Department of the Law Offices of _____, Esq., has investigated, traced and established that the grantor may be entitled and established that the grantor may be entitled to the funds indicated in the FIRST paragraph and that the grantor wants to recover said funds.

The grantor hereby appoints _____, Esq., his Representatives, Advisors, and Attorneys to act on his behalf in all transactions regarding the claim, transfer or distribution of the money, credits or assets owing to grantor. The grantor grants said agent full power and authority to receive the money in the name and on behalf of the grantor and to issue letter of payment and relief in the name of the grantor. No one paying the claim for money or funds in favor of the grantor will be required to verify final disposition of same.

For value received and for services rendered, the grantor hereby conveys, assigns, and transfers fees at thirty-three and one third percent (33.33%) for the search, legal costs, attorney's fees, ordinary and extraordinary expenses, to be paid to _____, Esq., only upon satisfactory recovery of funds by _____, Esq., in favor of the undersigned. That the grantor will pay no expense or cost before the claim for funds is successfully completed.

The grantor agrees at all times to compensate and relieve ___, Esq., his agents, legal representatives, successors and assigns, and any city, county, state government and federal government, their officers and employees (hereinafter the obligors) of all claims, actions or suits, groundless or not, and of any obligations, losses, damages, judgments, costs and expenses, attorney's fees, and other expenses of any kind or nature for honoring or refusing to honor the original evidence of ownership when it is timely presented for or on behalf of the holder or an apparent holder or person the obligors believe

to be the holder, or for making payment, delivery or credit with regard to original evidence of ownership without conveyance; be it caused or not caused or based on or arising from oversight, accident, carelessness, negligence or omission or because inquiry into, response or litigation of the right of any claimant to receive any payment, credit, transfer, registration, conversion, barter or delivery with regard to the original evidence of ownership has not been carried out, or caused by, based on, or arising from any other matter or other affair.

This CLAIM FOR REFUND UNDER OATH to apply for the recovery of funds is specifically limited to those funds mentioned in the FIRST paragraph which have not been claimed by the undersigned during a period of not less than five (5) years. These funds do not include tax refunds, benefits, payments, credits, dividends, or money not claimed by the undersigned during a period of five (5) years.

Date: _____

Affidavit # _____ _____

Grantor

Sworn and signed to before me by _____, a resident of _____, Puerto Rico, personally known to me. In San Juan, Puerto Rico, this ____ day of ____, ____.

_____

Notary Public

The Solicitor General notified attorneys Franco Rivera and Masini Soler of the complaint. In due time, Franco Rivera informed her that, in his opinion, he had not violated any ethical precept since the letters he sent to

the depositors did not constitute an offer of his professional services. Masini Soler, on the other hand, excused himself for the "inconveniences he inadvertently, acting in good faith" might have caused and moved that the dispute be put to rest as he understood that a letter he had written to Herrero, Jr., desisting from his collection efforts satisfied the latter. However, *contrary to this affirmation*, Herrero, Jr. submitted in evidence letters from Masini Soler charging several depositors a fee of 20% instead of the 33% agreed to for the steps taken up to that point.[2]

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[2] The letter, also preprinted and stereotyped, read:
"Dear Client:

"Recently, you authorized us, through a Claim for Refund Under Oath, to locate and withdraw, in your name on your behalf, the amount indicated above. To those effects, we took the pertinent steps with the depository of same, Banco de Santander de Puerto Rico, who has refused reimbursement alleging that the document you signed is not acceptable to its Legal Division. We disagree with the Bank in this regard and understand they have assumed an arbitrary position that is damaging to your interests as well as ours.

"Our agreement was to locate and remit your money, less our professional fees. However, attending to our professional responsibility, we are informing you that the amount to which you are entitled appears above *and may be claimed directly from the referenced Branch*. Since we are unable to carry out part of this agreement because of the aforementioned circumstances beyond our control, *we believe it is fair to reduce same from 33⅓% to 20%*.

"Upon withdrawal of the unclaimed amount, we would appreciate your remittance of 20% of the net amount received by you to the following address: 461

At this stage, the Solicitor General submitted her report stating that the conduct violated Canon 34 because it constitutes personal solicitation and Canon 35 because such conduct is neither sincere nor honest.

Following Masini Soler's reply and a second report, we gave Masini Soler twenty (20) days to file a rejoinder and show cause why he should not be disciplined. He reiterates that his letter was not deceptive or misleading since: 1) the depositors to whom it was addressed were under no obligation to retain him; 2) it neither informed nor stated where the money was, and when that was done, there were cases in which "his fees were not paid" because the depositors withdrew their money directly; and 3) he insisted on collecting 20% of his fees because when the bank rejected the claim, he informed the depositor where to locate the money.

We followed the same procedure with Franco Rivera, who essentially reaffirms his original position that Canon 34 does not apply for he did not provide any professional assistance since the amounts on deposit were never in "controversy." He contends that inclusion of his name as

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Ponce de León Avenue, John Morris Bldg., Suite 200, Hato Rey, P.R. 00918. *We remind you that without our intervention you would not have become aware that you are entitled to these unclaimed moneys. That is the importance of our careful and tireless investigative work.*

We suggest you withdraw these funds before December 9, 1991, the date on which they will be placed in the custody of the Treasury Department. If you have any doubt or question, please call me at 753-3692."

(Underscore supplied.)

a lawyer "was intended to make the person *feel secure* in wanting to retain him for said transaction since having a lawyer *involved* would instill confidence. Not, I repeat, not because we understand or because we would be actually taking steps in our capacity as a lawyer."

II

Traditionally, the legal profession has regarded advertising and solicitation with misgiving. This attitude springs from the belief that virtue and good reputation are the best promotion. Since 1908, the diverse ethics regulations proposed by the American Bar Association have outlined rules in this regard. Hill, *A Lawyer's Pecuniary Gain: The Enigma of Impermissible Solicitation*, 5 Geo. J. Legal Ethics 393, 394 (1991); Hill, *Solicitation by Lawyers: Piercing the First Amendment Veil*, 42 Me. L. Rev. 369, 370 (1990); Note: *Constitutional Regulation of "Targeted Direct-Mail Solicitation" By Attorneys After Shapero – A Proposed Rule of Conduct*, 34 Vill. L. Rev. 281 (1989); Note: *Shapero v. Kentucky Bar Association and Targeted, Direct-Mail Solicitation by Lawyers: How can States Protect Their Residents from Overreaching and Deceptive Solicitation*, 1989 Utah L. Rev. 521, 522; C. Wolfram, *Modern Legal Ethics* 776, St. Paul, Minn., West Pub. Co. (1986); Zomick, *Attorney Solicitation of Clients: Proposed Solutions*, 7 Hofstra L. Rev. 755, 757 (1979). Puerto Rico is no exception.[3]

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[3] Canon 36(A) of our Code of Ethics, 4 L.P.R.A. App. IX, embodies this view. It reads:

> "An attorney's best possible advertisement is a reputation of capability and integrity earned in the practice of his profession."

During the last two decades, ethical standards governing advertising and solicitation and their impact on the freedom of speech guaranteed by the First Amendment to the Federal Constitution, have been the object of important court decisions. In *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), the United States Supreme Court held that lawyers' advertisements are constitutionally protected by freedom of speech and cannot be prohibited, although the State may restrict those that are false, deceptive, or misleading. This decision fundamentally rested on *VA. Pharmacy Bd. v. VA. Consumer Council*, 425 U.S. 748 (1976), establishing that the interest of consumers in the free flow of truthful information about lawful commercial activities justified extending some protection to commercial speech under the First Amendment to the Constitution. Maute, *Scrutinizing Lawyer Advertising and Solicitation Rules Under Commercial Speech and Antitrust Doctrine*, 13 Hastings Const. L. Q. 487, 496 (1986); Note: *Constitutional Regulation . . . , supra*, at 286-287.[4] *In re R.M.J.*,

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[4] Later it extended First Amendment Protection to mail solicitations in representation of a non-profit organization, but not to personal solicitation for pecuniary gain under circumstances likely to pose dangers that the State has a right to prevent. *In re Primus*, 436 U.S. 412 (1978).

In *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), the Court held that disciplining a lawyer for publishing a *nondeceptive* advertisement targeted to persons with a specific legal problem is an attempt against freedom of speech but not if the lawyer fails to inform in his advertisement that clients may be liable for litigation costs.

According to this decision, the impact of content-requirement regulations on the interests of the advertiser is less than on the prohibition. Therefore, in order to reduce the possibility of confusion or deception, warnings or exceptions may be required. *Zauderer v. Office of Disciplinary Counsel, supra*, at 650.

455 U.S. 191, 203 (1982), explained the criteria to be used in regulating attorneys' advertisements as follows:

> Truthful advertising related to lawful activities is entitled to the protections of the First Amendment. But when the particular content or method of the advertising suggests that it is inherently misleading or when experience has proved that in fact such advertising is subject to abuse, the States may impose appropriate restrictions. Misleading advertising may be prohibited entirely. But the States may not place an absolute prohibition on certain types of potentially misleading information, e.g., a listing of areas of practice, if the information also may be presented in a way that is not deceptive.

Subsequently, *Shapero v. Kentucky Bar Assn.*, 486 U.S. 466 (1988), reiterated that business solicitation through *nondeceptive* mailings to potential clients with legal problems known to the lawyer could not be prohibited. The Court refused to establish an analogy between mail and personal solicitation inasmuch as the former does not hold the same degree of risk of fraud, improper influence, intimidation or deception as the latter.[5] *Shapero v. Kentucky Bar Assn., supra,* at 475; Note, *Constitutional Regulation . . . , supra,* at 307.

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[5] Since *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447 (1978), it has been recognized that the state entity charged with regulating the legal profession may constitutionally discipline a lawyer for personally soliciting business for monetary gain from people who are not clients in circumstances which would probably present an attempt against some interest the state wants to protect.

In *Edenfield v. Fane*, 61 U.S.L.W. 4431 (1993), the rule set in *Ohralik v. Ohio State Bar Assn., supra,* was reiterated, but a regulation of the Florida Board of Accountancy prohibiting Certified Public Accountants from any type of direct and personal solicitation to promote their professional services to people who

In contrast, personal solicitation by a lawyer is banned – *Ohralik v. Ohio State Bar Assn.*, 436 U.S., at 465-466 (1978), because face-to-face confrontation:

> [I]s significantly greater when a lawyer, a professional trained in the art of persuasion, personally solicits an unsophisticated, injured, or distressed lay person. Such an individual may place his trust in a lawyer, regardless of the latter's qualifications or the individual's actual need for legal representation, simply in response to persuasion under circumstances conducive to uninformed acquiescence. Although it is argued that personal solicitation is valuable because it may apprise a victim of misfortune of his legal rights, the very plight of that person not only makes him more vulnerable to influence but also may make advice all the more intrusive. Thus, under these adverse conditions the overtures of an uninvited lawyer may distress the solicited individual simply because of their obtrusiveness and the invasion of the individual's privacy, even when no other harm materializes. Under such circumstances, it is not unreasonable for the State to presume that in-person solicitation by lawyers more often than not will be injurious to the person solicited.

This sufficed to move the court to establish a categorical prophylactic rule against personal solicitation.

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were not their clients and had not required their services, was declared unconstitutional because it violated the First and Fourteenth Amendments to the Federal constitution. The distinction was based on the fact that prohibition of personal solicitation depends on the profession in which it is being carried out. The lawyer is an expert in the art of persuasion and the accountant is not.

Furthermore, the Court considered it important that personal solicitation, as opposed to written solicitation, in many cases cannot be verified because it is usually done in private, without witnesses or written evidence of what is said by the lawyer. This justifies greater State restriction.[6]

The decision gave mail solicitation of people with known legal problems *the same treatment* given to published advertisements since this also permits the consumer to reflect and use judgment freely. *Shapero v. Kentucky Bar Assn., supra,* at 476; *In re Anis,* 60 U.S.L.W. 2465 (1992); *McHenry v. Florida Bar,* 61 U.S.L.W. 2409 (1992). In *United States v. Kokinda,* 497 U.S. 720, 725 (1990) – later cited in *Edenfield v. Fane,* 61 U.S.L.W. 4431 (1993) – the court held that "[s]olicitation is a recognized form of speech protected by the First Amendment."

Our decisions, although few, have not been far removed from that case law. Thus, in *In re González,* 112 D.P.R. 430, 432 (1982), we rejected a constitutional issue based on freedom of speech against Canon 36(B)(1) then in force, and imposed disciplinary sanctions because the *advertisements* published contained "a high potential of

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[6] See also: *Bates v. State Bar of Arizona,* 433 U.S. 350, 383-384 (1977); Note: *Shapero v. Kentucky Bar Association and Targeted, Direct-Mail Solicitation by Lawyers: How Can States Protect Their Residents from Overreaching and Deceptive Solicitation,* 1989 Utah L. Rev. 521, 530; Hill, *A Lawyer's Pecuniary Gain: The Enigma of Impermissible Solicitation,* 5 Geo. J. Legal Ethics 393, 406-407 (1991); Zomick, *Attorney Solicitation of Clients: Proposed Solutions,* 7 Hofstra L. Rev. 755, 770 (1979); Andrews, *Lawyer Advertising and the First Amendment,* 1981 Am. B. Found. Res. J., 967, 976-978.

being misleading and confusing in two important aspects." That same date, in *In re Ibarra Ortega*, 112 D.P.R. 434, 437 (1982), we imposed a fine on some advertisements that tended "to generate confusion, false expectations and a poor opinion as to the seriousness and integrity of the professionals." And in *In re Valentín González*, 115 D.P.R. 68 (1984), we held that *indiscriminate* mailing of letters offering professional services to specific potential clients in work-related accidents violates Canons 34 and 36 of Professional Ethics. We did not elucidate whether the solicitation at issue was false, misleading or caused confusion.

III

The Solicitor General, as we said, charges respondents Franco Rivera and Masini Soler with violations of Canons 34 and 35 of Professional Ethics.[7] Pursuant to

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[7] Canon 34 deals with stirring up or procuring litigation. It reads:

> "A lawyer who, for profit, gives unsolicited counseling or advise, encourages or promotes, in any manner, potential clients to bring lawsuits or any other type of claims, is acting against the high postulates of the profession. It is also against the sound practice of the profession for a lawyer, without having been required to hunt up, personally or through agents, defects in titles or other possible sources or causes of action in order to receive some kind of benefit through his professional services.
>
> "It is highly reprehensible for a lawyer, whether acting directly or through intermediaries or agents, to procure employment for himself or for other lawyers, thus defiling the integrity and prestige of the profession. Likewise it is unprofessional for a lawyer to give

ours and to federal Supreme Court case law, mailing nondeceptive letters or letters that do not lead to error offering the services of a lawyer to people with problems known to the lawyer is protected by the First Amendment. *This cannot be categorically prohibited.* To sanction respondents Franco Rivera and Masini Soler under Canon 34 merely because they sent letters offering their services to people with inactive accounts would be an attempt against freedom of speech.

Having clarified this point, the issue boils down to deciding whether the solicitation carried out by both of them was done through false, deceptive or misleading letters. As indicated, Canon 35 imposes on the Lawyer an obligation to be sincere and honest *erga omnes*; this includes his clients and potential clients.

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or offer benefits, favors or compensation of any type to public employees, insurance adjusters, or other third persons for the purpose of gaining their favor so that they may refer matters which might give rise to claims or cases, thus increasing the lawyer's clientele.

"Because of the fact that this constitutes disreputable conduct with respect to the legal profession as well as to justice in general, every member of the bar is bound to inform the competent agencies, immediately after having knowledge thereof, of any case involving such improper and reprehensible practice."

Canon 35 requires lawyers to be sincere and honest. Insofar as it is pertinent, it provides:

"The conduct of any member of the legal profession before the courts toward his clients and in his relations with his colleagues should be candid and fair."

In view of the attendant circumstances, we hold that attorneys Franco Rivera and Masini Soler flagrantly violated this precept. *First*, the *modus operandi* is not incidental but was skillfully planned – the impressive *Property Recovery Department* stands out – with the sole intent to profit from the unreasonable collection of one third [of the moneys] in fees, in an inherently simple, *noncontroversial*, routine transaction. Of 150 cases, Masini Soler used it successfully in thirty-five (35) inactive accounts of several banks and insurance companies. Franco Rivera, in turn, sent the notice to an undetermined number of people. We do not know the results or the amounts both collected in attorney's fees. *Second*, the "legal notices" mailed – which are nothing more than letters offering their services – are inherently *misleading*. They lacked any reference to the fact that the funds involved were deposits in inactive bank accounts.[8] By the same token, the preprinted, stereotyped form "CLAIM FOR REFUND UNDER OATH" – which was part of the letters – did not state the origin of the funds they promised to recover.[9]

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[8] We refer to the letter sent to José Margarida González by Franco Rivera and to those mailed to Carmelo Martínez Figueroa and Dr. Luis Flores Villar by Misini Soler.

[9] The first paragraph of the preprinted form read:

> "I,_____, owner of funds in the amount of approximately $____, be they abandoned or unclaimed property, assets of a dissolved or existing Corporation, unclaimed dividends or corporate distribution, life insurance Policy yields, estate funds or other condemned property. Under notarial oath, I declare the following: . . . "

And *third*, respondents Franco Rivera and Masini Soler did *not* inform their potential clients that they *did not need the services of a lawyer* to recover the funds on deposit.[10] To a lay person, the content of the letter gave a different impression. This final warning was *crucial* to keep the notices from being misleading because failure to include it could induce the addressees to believe that the legal services offered *were indispensable* for recovering the funds. As a matter of fact, that was the premise of the solicitation. This is evident in those cases in which Masini Soler tried to collect, *anyway*, the reduced fee of 25% or 20% regardless of whether the client recovered the funds directly or the bank denied the legal "claim." (See Appendices A, B, and C.)

In view of the nature and seriousness of the ethical infraction, we order the separation of Franco Rivera and Masini Soler from the legal practice for a period of six (6) months.

Judgment will be rendered accordingly.

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[10] In *Bates v. State Bar of Arizona, supra*, at 375, the Court expressed its disagreement with the lack of needed information in the solicitation. The Court stated:

> "In any event, we view as dubious any justification that is based on the benefits of public ignorance. . . . Although, of course, the bar retains the power to correct omissions that have the effect of presenting an inaccurate picture, the preferred remedy is more disclosure, rather than less."

IN THE SUPREME COURT OF PUERTO RICO

*In re*

Attorneys José R. Franco Rivera and Juan M. Masini Soler — No. AB-92-24

JUDGMENT

San Juan, Puerto Rico, December 10, 1993

For the reasons set forth in the foregoing opinion, which is made an integral part of this judgment, we order the separation of attorneys José R. Franco Rivera and Juan M. Masini Soler from the legal practice for a period of six (6) months, to begin when this order becomes final and unappealable. The Marshal of the Court is ordered to seize their Notarial work and protocols to be turned over in due time to Govén D. Martínez Surís, Esq., Director of Notarial Inspection, for the pertinent action.

It was so decreed and ordered by the Court and certified by the Chief Clerk. Justice Hernández Denton took no part in this decision.

Francisco R. Agrait Lladó
Chief Clerk

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APPENDIX B

CERTIFIED TRANSLATION:

IN THE SUPREME COURT OF PUERTO RICO

| | | |
|---|---|---|
| IN RE: | | ( |
| ATTY. | | ( |
| JUAN M. | No. AB-92-24 | ( |
| MASINI-SOLER | | ( |
| _____ | | (_____ |

RESOLUTION

In San Juan, Puerto Rico, on 17 December 1993.

Having examined the urgent motion in aid of jurisdiction on stay of mandate and complementary motion to urgent motion filed in this case, DENIED.

It was so agreed by the Court and the General Cler[illegible] so certifies. Associate Justice Mr. Rebollo-López "understands that attorney Masini-Soler is *partially* right. The notarial work should be seized once our judgment becomes final and firm." Associate Justice Mr. Hernández-Denton disqualified himself.

Francisco R. Agrait-Lladó
General Clerk

---

**– CERTIFIED –**

To be a correct translation prepared by:
/s/ Ernesto Quidgley 4-28-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, P.R. 00921
(809) 751-8334

## APPENDIX C

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

*In re*

Attorneys José R. Franco Rivera and Juan M. Masini Soler — No. AB-92-24

RESOLUTION

San Juan, Puerto Rico, January 20, 1994

The motion for reconsideration (rehearing) filed by attorney José Ramón Franco Rivera is hereby denied.

Attorney Juan M. Masini Soler may file a motion for reconsideration in excess of the pages required; the said motion is denied.

It was so agreed by the Court and certified by the Chief Clerk Justice Hernández Denton took no part in this decision.

Francisco R. Agrait Lladó
Chief Clerk

## APPENDIX D

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

*In re*

Attorneys José R. Franco Rivera and Juan M. Masini Soler — No. AB-92-24

RESOLUTION

San Juan, Puerto Rico, February 16, 1994

The second motion for reconsideration (rehearing) filed by attorney José Ramón Franco Rivera is denied. He shall abide by this decision.

Regarding the motions filed by attorney Richard W. Markus, he is authorized to join the legal representation of respondent Juan M. Masini Soler, and he may file a motion for reconsideration in excess of the pages required.

Attorney Juan M. Masini Soler's second motion for reconsideration is denied. He shall abide by this decision.

We have carefully examined the United States Supreme Court decisions cited, and hereby hold that the respondents have no rights under the same. Our previous decision carefully weighed and considered the issues, allegations, and documentary evidence submitted by the respondents following the show cause order. Sanctions were imposed, not because of the solicitations per se, but because of their unbecoming behavior with regard to their potential clients, in violation of Professional Ethics

Canon 35 which requires lawyers to be honest and sincere in all aspects of their professional endeavor.

In this particular case the respondents' conduct was so obviously lacking in sincerity and honesty that, as any lawyer knows or should know, it did not meet the standards of performance expected from a member of the profession. Their transactions with potential clients were clearly misleading, particularly when we consider how naive and gullible a great part of our population is when dealing with claims that have the appearance of authenticity, and how susceptible it is to legal claims.

The letter sent by the respondents to potential clients was cleverly written, without providing the necessary information to allow a potential client to make a free, conscientious decision whether or not to accept the services offered and to pay, as proposed therein, for those services.

The respondents' letter was deliberately geared at giving an erroneous impression about various points and was, therefore, deceptive. Said letter:

1. gave the erroneous impression that it was not an offer of services but rather an authoritative legal notice;

2. gave the erroneous impression that the respondents' offices had gone to great lengths to discover some funds owned by the potential clients;

3. gave the erroneous impression that the potential clients could not recover those funds without the intervention of the respondents;

4. gave the erroneous impression that in order to recover the funds, potential clients had to use the form

sent by the respondents, which had to be done under oath before a notary;

5. gave the erroneous impression that the respondents had the undisputable right to collect 33% of the funds to be recovered.

The letter in question was not an offer of professional services to potential clients. It was rather a scheme to take advantage of the ignorance of the owners of those funds. Such crafty behavior is reprehensible even when coming from common, ordinary people. When lawyers engage in such conduct, it becomes patently dishonest since it constitutes an abuse of the lay person at the hands of the expert. This is the type of conduct that discredits the legal profession and lends credibility to the widespread notion that lawyers are not trustworthy people.

The Clerk of the Court is instructed to publish this decision.

It was so agreed by the Court and certified by the Chief Clerk. Justices Rebollo López and Hernández Denton took no part in this decision.

Francisco R. Agrait Lladó
Chief Clerk

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## APPENDIX E

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

*In re*

Attorneys José R. Franco Rivera and Juan M. Masini Soler — No. AB-92-24

RESOLUTION

San Juan, Puerto Rico, February 25, 1994

Having passed on the merits of the Motion for Reconsideration (rehearing), it is denied.

The petition for stay of mandate is also denied.

It was so agreed by the Court and certified by the Chief Clerk. Justice Rebollo López would reduce the sanction to three months. Chief Justice Andréu García and Justice Hernández Denton took no part in this decision.

Francisco R. Agrait Lladó
Chief Clerk

## APPENDIX F

Commonwealth of Puerto Rico
Supreme Court
Office of the Clerk
Bureau of Translations
P.O. Box 2392
San Juan, Puerto Rico 00902-2392

### CERTIFICATE OF TRANSLATION

This is to certify that the attached translation of the *Opinion and Judgment rendered by this Court on December 10, 1993 (Case No. AB-92-24), In re Attorneys José R. Franco Rivera and Juan M. Masini Soler, and related documents (Resolution of January 20, 1994, Resolution of February 16, 1994, and Resolution of February 24, 1994)*, made by the Bureau of translations of the Supreme Court of Puerto Rico, is an accurate rendition into the English language of the original Spanish.

/s/ Olga A. Lasa Delgado
Olga A. Lasa Delgado
Director
Bureau of Translations
Supreme Court of Puerto Rico

### CERTIFICATE OF THE CHIEF CLERK

I, Francisco R. Agrait-Lladó, Chief Clerk of the Supreme Court of Puerto Rico, DO HEREBY CERTIFY:

That the annexed document is a photocopy of the official translation of the *Opinion and Judgment rendered by this Court on December 10, 1993 (Case No. AB-92-24), In re Attorneys José R. Franco Rivera and Juan M. Masini Soler,*

*and related documents (Resolution of January 20, 1994, Resolution of February 16, 1994, and Resolution of February 25, 1994)*, made by the Bureau of Translations of this Court under the authority of Act No. 87 of May 31, 1972, the original of which in Spanish is under my custody in this Office.

IN WITNESS WHEREOF, at the request of the interested party, and upon collection of the appropriate fees, I issue these presents under my hand and the seal of this Court in San Juan, Puerto Rico, this 15th day of April, 1994.

/s/ Francisco R. Agrait-Lladó
Chief Clerk
Supreme Court of Puerto Rico

By: /s/ Carmen E. Cu Ruira
Deputy Clerk

[SEAL]

[Stamps affixed on original]

## APPENDIX G

### Canon 34. Stirring up or procuring litigation

A lawyer who, for profit, gives unsolicited counseling or advice, encourages or promotes, in any manner, potential clients to bring lawsuits or any other type of claims, is acting against the high postulates of the profession. It is also against the sound practice of the profession for a lawyer, without having been required to hunt up, personally or through agents, defects in titles or other possible sources or causes of action in order to receive some kind of benefit through his professional services.

It is highly reprehensible for a lawyer, whether acting directly or through intermediaries or agents, to procure employment for himself or for other lawyers, thus defiling the integrity and prestige of the profession. Likewise it is unprofessional for a lawyer to give or offer benefits, favors or compensation of any type of public employees, insurance adjusters, or other third persons for the purpose of gaining their favor so that they may refer matters which might give rise to claims or cases, thus increasing the lawyer's clientele.

Because of the fact that this constitutes disreputable conduct with respect to the legal profession as well as to justice in general, every member of the bar is bound to inform the competent agencies, immediately after having knowledge thereof, of any case involving such improper and reprehensible practice. – Dec. 24, 1970, eff. Dec. 24, 1970.

**Canon 36. Publicity or advertising by attorney**

(A) An attorney's best possible advertisement is a reputation of capability and integrity earned in the practice of his profession.

(B) When advertising in the public media, an attorney should avoid any type of propaganda that may promote unnecessary suits, encourage unreasonable expectations as to the success of his efforts, or affect the dignity of the attorney-client relationship. As a rule, any type of advertisement that is not justified as a reasonable and professionally accepted means to keep the public informed of the legal services available is not appropriate. Particularly inappropriate is any type of advertisement that includes:

(1) Diagrams, drawings, photographs or any other type of illustration, or

(2) self-laudatory expressions of the attorney or a reference to the quality of his legal services, or

(3) a claim that the attorney is a specialist or an expert in a specific area of law, or

(4) false, fraudulent, or misleading expressions or information, including the following:

(a) ambiguous representation of a factual situation.

(b) failure to mention any fact that is essential for the full understanding of the matter to which the pertinent part of the advertisement refers.

(c) expressions that may give the impression that the attorney is in a position to unduly influence courts or public officials.

(d) any vague reference to fees, or any reference to services whose total value cannot be anticipated when the attorney is retained.

(C) In order to facilitate the process for the selection of a legal representative by potential clients, the attorney may publish information regarding the legal services he renders in the newspapers, radio or television, providing subsection (B) of this canon is not violated. He may include the following:

(1) the attorney's name and his business address and telephone number.

(2) information about what areas of law he covers in his practice, including the expression that his practice is limited to one or more disciplines.

(3) information about his fees for routine legal services, such as: uncontested divorces, adoptions, licenses to carry arms and renewal thereof, declarations of heirship and name changes.

(4) information about the way in which fees may be paid, including whether there are payment arrangements or if certain credit cards are accepted.

(D) The practice of paying or somehow compensating members of the media – printed press, radio, and television, or any other publicity medium – for advertising the name or the professional work of an attorney is unethical.

(E) The publication of a brief professional note in a legal directory is allowed as one of the acceptable means to let people know of the availability of an attorney to render legal services.

(F) Any doubt an attorney may have as to the correctness and propriety of a certain means of publicity should be consulted with the Bar Association Committee appointed for this purpose.

(G) Nothing in this canon should be interpreted as allowing the personal soliciting of clients for profit, be it directly or indirectly. – Amended June 30, 1980, eff. Aug. 1, 1980.

## APPENDIX H

(Seal) 4-2-94

CERTIFIED TRANSLATION:

IN THE SUPREME COURT OF PUERTO RICO

IN RE:

ATTY. JOSE R. FRANCO-RIVERA
ATTY. JUAN M. MASINI-SOLER

### SOLICITOR GENERAL'S REPORT

Mr. José R. Franco, Esq.
P.O. Box 4292
Old San Juan Station
San Juan, Puerto Rico 00902
Tel: 723-7089

Mr. Juan M. Masini-Soler, Esq.
P.O. Box 3367
Old San Juan, Puerto Rico 00904
Tel: 751-0447

ANABELLE RODRIGUEZ
Solicitor General
Bar Member No. 9572

REINA COLON DE RODRIGUEZ
Deputy Solicitor General
Bar Member No. 4894

YVONNE CASANOVA-PELOSI
Assistant Solicitor General
Bar Member No. 9937

Department of Justice
P.O. Box 192
San Juan, Puerto Rico 00902
Telephone: 721-2900 Ext.285

SAN JUAN, PUERTO RICO
ON 6 MARCH 1992

IN THE SUPREME COURT OF PUERTO RICO

IN RE:

ATTY. JOSE R. FRANCO-RIVERA
ATTY. JUAN M. MASINI-SOLER

**SOLICITOR GENERAL'S REPORT**

TO THE HONORABLE COURT:

Comes now the Solicitor General and very respectfully states, alleges and prays.

On 4 November 1991 at this Office appeared Atty. Ismael H. Herrero, Jr. for the effects of filing an administrative complaint against attorneys José R. Franco-Rivera and Juan Masini-Soler. [See Annex I]

In said appearance Mr. Herrero alleged that he represented the Banco Santander de Puerto Rico and the Santander Federal Savings Bank. He indicated that these banks, as required by law, publish in the newspapers the list of inactive accounts indicating, among other things, the name, address of the depositor, account number and branch. According to Mr. Herrero, the respondent attorneys extract the information published and subsequently address a letter to said depositors offering their services. [See Annex II]

As can be seen, the document forwarded by the respondents to the depositors consists of a leaflet, the upper part of which is to be detached. In the upper part the following is pointed out, and we quote:

LEGAL NOTICE

Our Department of Recovery of Assets has detected certain funds that belong to you.

> If you are interested in recovering them, sign before a Notary the PETITION FOR CLAIM UNDER NOTARIAL OATH and forward it as soon as possible to file a claim on your behalf. Make a copy for yourself before you send in the original.
>
> Sincerely,

In this "Legal Notice" the potential client is told that the attorney has detected the assets belonging to the depositor and that if he/she is interested in recovering them, he/she must sign before a notary the petition for "Claim for Funds" included in the leaflet. In his "Legal Notice" the attorney adds that, once the petition has been sworn to, the depositor must return the same to the sender for the latter to proceed to recover the funds deposited.

It does not arise from the "Legal Notice" that the depositor is informed or oriented about the alternative that he/she has of making his/her collection efforts personally with the banking institution without finding himself/herself in the need to retain the services of an attorney.

The Solicitor General requested from Messrs. Franco and Masini-Soler that they offer us their version of the controversy object of Mr. Herrero's complaint. [See Annexes III and IV]

In his appearance, Atty. José R. Franco admits having sent the communication at controversy to the depositors and adds the following. [See Annex V]

> " . . . The only thing that I can say is that I, José R. Franco, a citizen like any other but *who happen to be* [emphasis ours] an attorney, sent a certain notice to countless persons wherein I offered them the service of submitting a petition signed by them before a notary, in order to recover for them certain funds (that belong to them) deposited in Bank accounts in Puerto Rico."

As to Rule 34 of Professional Ethics, attorney Franco adds the following:

> "As I read and interpret the aforesaid Rule, the same is addressed to prohibit an attorney, *acting in his capacity and as such*, to offer and/ or solicit work of a *legal nature* from future or prospective clients. I consider that the services offered in no manner differ (to these effects) for example, from those offered by certain persons in Puerto Rico who provide the service of renewing driver's licenses on behalf of others."

On his part, Mr. Juan M. Masini-Soler in his appearance before this Office offers his apology for the "inconveniences that inadvertently and acting in good faith" he may have caused this Office with his behavior. [See Annex VI] He included with his appearance a copy of a letter forwarded to attorney Herrero (complainant herein) whereby he desists of his collection efforts on behalf of the depositors who had so authorized him to act. In the aforesaid letter he points out, among other things, the following: [See Annex VII]

> "Nevertheless, before the Bank's refusal to honor said claim for funds, I will be informing the claimants in writing about such decision of the Bank and informing them to proceed and

> make their claim directly. I believe that in this manner I am responsibly discharging my duty towards said claimants. On the other hand, I understand that, on its day, the Bank could be liable for damages, if any, suffered by the claimant and/or his/her attorney because of the Bank's refusal to honor the claim for funds under notarial oath."

As we can observe, attorney Masini-Soler pointed out to attorney Herrero in the aforesaid letter that he had proceeded to inform the depositors that he had desisted from representing them in the collection of the funds. Nevertheless, Mr. Herrero submitted as evidence to us the letters that Mr. Masini-Soler had forwarded to the depositors, wherefrom it arises that although he informed them that he was resigning their legal representation, he was charging them 20% instead of the agreed-upon 33% for the efforts made until that moment. [See Annex III]

## CONCLUSION

After evaluating the evidence compiled in this controversy, we understand that the attorneys at caption incurred in conduct in violation of Rule 34 of Professional Ethics. Said Rule points out the following:

> "Any attorney who, for the purpose of profit and without having been required to offer his/her legal counsel or advice, in any manner whatsoever urges or stimulates potential clients to initiate judicial claims or claims of any other nature, is acting contrary to the high precepts of the profession. It is also contrary to the sound practice of the profession that an attorney, without having been required to do so, whether he/

> she does it personally or through other persons, investigate or search for defects in titles or other possible sources or causes of claims for the purpose of benefitting himself/herself in some manner by providing his/her professional services."

The contention in the specific case of attorney Franco that his action was one that was not done in his capacity as an attorney and that for such reason Rule 34 is not applicable to said conduct is an exercise in futility. As this Illustrious Forum can observe, from the flyer sent to the depositors by the respondent it arises that the same constitutes a "Legal Notice" thus the respondent himself qualifying his action as one of a legal nature.

This Illustrious Forum has pointed out in countless occasions that this type of personal solicitation on the part of an attorney whereby the latter sends letters to potential clients to offer them his/her professional services violates Rule 34 of Professional Ethics. [See *In Re Valentín González*, 114 D.P.R. 68 (1984) and *Shapiro v. Kentucky Bar Assn.*, 763 SW 2nd 126 (1989)]

On the other hand, as we pointed out earlier in this report, the attorneys did not include in the leaflet sent to the depositors information about the feasibility of processing their claim personally and without the need to retain the services of an attorney. This is indicative of the possible intention of the respondents of inducing the depositors to believe that said action could only be achieved through a legal representative. This unethical conduct attempts against Rule 35 of Professional Ethics, which provides that all attorneys must exercise a sincere

and honest conduct in the performance of their legal profession.

**WHEREFORE**, we respectfully pray of this Illustrious Forum that it take notice of what is reported herein and that, after the required processing, it provide as may be proper at law.

Respectfully submitted.

In San Juan, Puerto Rico, on 6 March 1992.

ANABELLE RODRIGUEZ
Solicitor General
Bar Member No. 9572

/Sgd/ (Unreadable)
REINA COLON DE RODRIGUEZ
Deputy Solicitor General
Bar Member No. 4894

/Sgd/ (Unreadable)
YVONNE CASANOVA-PELOSI
Assistant Solicitor General
Bar Member No. 9937

**NOTICING**

I CERTIFY: That via certified mail, return receipt requested, a copy of the foregoing Report has been forwarded to Mr. José R. Franco, Esq., to his address, P.O. Box 4292, Old San Juan Station, San Juan, Puerto Rico 00902 and to Mr. Juan M. Masini-Soler, Esq., to his address, P.O. Box 3367, Old San Juan, Puerto Rico 00904.

In San Juan, Puerto Rico, on 6 March 1992.

/Sgd/ (Unreadable)
YVONNE CASANOVA-PELOSI
Assistant Solicitor General
Bar Member No. 9937

Department of Justice
P.O. Box 192
San Juan, Puerto Rico 00902
Telephone: 721-2900 Ext.285

ca

---

**- CERTIFIED -**

To be a correct translation prepared by:

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

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CERTIFIED TRANSLATION:

ANNEX I

LAW OFFICES
**GONZALEZ-OLIVER, CORREA-CALZADA, COLLAZO-SALAZAR, HERRERO & JIMENEZ**
POST OFFICE BOX 11550
SAN JUAN, PUERTO RICO 00922-1550

(Stamped): **91 NOV 18 AM 11:33**

W. GONZALEZ-OLIVER
M. CORREA-CALZADA
B. COLLAZO-SALAZAR
I.H. HERRERO, JR.
P.A. JIMENEZ
M.L. CORREA-MARQUEZ
I.H. HERRERO III
O.P. GOBLE
R. GUZMAN
P. RIVERA-MATOS
A. SURILLO
J.G. BAREA
F.R. FIGUEROA
S.G. GONZALEZ

TELEPHONE (809) 793-5000
BANCO SANTANDER
PUERTO RICO BLDG
1508 F.D.
ROOSEVELT AVENUE
SAN JUAN, PUERTO RICO
CABLE ADDRESS:
"COCOHER"
FAX NO. 793-5007

SANTANDER FEDERAL
SAVINGS BUILDING
ROAD NO. 2
CORNER ROAD
NO. 167
BAYAMON, PUERTO RICO
TELEPHONE (809) 798-2710
FAX NO. 798-2717

4 November 1991

Puerto Rico Bar Association
Attention: Professional Ethics Committee
P.O. Box 1900
San Juan, Puerto Rico 00903

RE: Possible violations of Professional Rules of Ethics 34 and 36G

Gentlemen:

Our office represents Banco Santander Puerto Rico and Santander Federal Savings Bank.

In recent months our clients have referred cases to us wherein we understand that the conduct, acts and practices of the attorneys involved constitute a possible violation of the Professional Ethics Rules, especially Rules 34 and 36G.

We have knowledge that both Banco Popular de Puerto Rico and the Chase Manhattan Bank have also been faced with identical cases.

The situation of facts is identical or similar in all cases, to wit:

a. The Bank as required by law, publishes in the newspapers the list of inactive accounts indicating, among others, the name and address of the depositor or owner of the inactive account, the account number and the branch.

b. The attorney or attorneys involved extract the published information and address a document to said depositors (consumers). The document consists of two parts: the upper part contains a leaflet with a perforation to be detached, wherein the name and address of the

depositor are shown and a "Legal Notice" wherein he/she is told that the sender (attorney) has detected certain assets (funds) that belong to the depositor, and that if he/she is interested in recovering them, he/she is to subscribe before a notary the Petition on "Claim for Funds Under Notarial Oath" (lower portion of the document forwarded) and return the same to the sender (attorney) for the latter (attorney) to proceed to recover the assets or funds.

c. In the document the attorney is appointed as agent for the claimant (depositor) and 33% of the funds recovered are "conveyed, assigned and transferred" to the attorney for attorney's fees and expenses for the recovery of the funds.

d. The first (and in some cases the only) contact between the depositor/claimant (client) and the attorney is what in effect is the personal solicitation, for pecuniary ends, that is sent directly to the depositor/claimant (client) offering for profit, and without being required to do so, legal counsel or advice, thus urging and stimulating potential clients to initiate claims. The attorney, without having been required to do so, either personally or through other persons, has investigated or researched possible sources or causes of claims for the purpose of obtaining a benefit for himself through the rendering of his professional services. By so acting, the attorney, acting directly or through intermediaries or agents, makes efforts to obtain for himself cases or claims in which to intervene.

I enclose a copy of the documents that have come into our hands, either through our clients, through discovery of evidence and/or depositions in Civil Cases # KAC 90-1868 (1003) and KAC 90-2010 before the Superior Court of Puerto Rico, San Juan Section, or through the investigation that we have conducted in relation to said cases with Banco Popular de Puerto Rico or other institutions.

The information herein contained is submitted in compliance with the provisions of the last paragraph of Rule No. 34 of Professional Ethics, for any corresponding investigation and action.

A copy of this letter and its enclosed documents is also being sent and notified to the Honorable Solicitor General, Department of Consumer Affairs, Commissioner of Financial Institutions and Puerto Rico Banking Association, for their knowledge, investigation and corresponding action.

Cordially,

/Sgd/ (Unreadable)
ISMAEL H. HERRERO, JR.

IHH/NM/A:12222768.CAR
BSPR(3)

**GONZALEZ-OLIVER, CORREA-CALZADA, COLLAZO-SALAZAR, HERRERO & JIMENEZ**

---

**– CERTIFIED –**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION:

ANNEX II

Tel. _____ File No. 2-90-15-2

Soc. Sec. # _____ LEGAL NOTICE

New Address _____

- José Margarida-González
  G.P.O. Box 3033
  San Juan, P.R.
  00936
-

Our Department of Recovery of Assets has detected certain funds that belong to you.

If you are interested in recovering them, sign before a Notary the PETITION FOR CLAIM UNDER NOTARIAL OATH and forward it as soon as possible to file a claim on your behalf. Make a copy for yourself before you send in the original.
Sincerely,

ATTY. José R. Franco-Rivera

José R. Franco-Rivera, Esq.
Law and Notarial Office
#251 Tanca Street
Old San Juan, P.R. 00902

Tel. 723-7089

P.O. Box 4292
Old San Juan, P.R. 00902

**CLAIM FOR FUNDS UNDER NOTARIAL OATH**

CITY OF
COMMONWEALTH OF PUERTO RICO

I, José Margarida-González by Randolph J. McConnie, Executor as owner of funds in the amount of $605.18 approximately, arising from abandoned property, unclaimed property, assets of a dissolved or existing Corporation, unclaimed dividends or corporate distribution, proceeds of a life insurance policy, or funds arising from an inheritance or other escheated property, under notarial oath state and say the following:

That I am of legal age and that I have the legal standing to sign this document and that I reside in the aforesaid City of the Commonwealth of Puerto Rico.

That the Department of Recovery of Assets of the Law Office of ATTY. JOSE R. FRANCO-RIVERA has done the work of investigating, tracing and establishing that the undersigned may be entitled to the funds indicated in the FIRST paragraph and that the undersigned wishes to recover said funds.

The undersigned does hereby appoint ATTY. JOSE R. FRANCO-RIVERA, his Representatives, Counsellors and Attorneys as his/her attorneys-in-fact to act in his/her name, place and stead in relation to all matters that the

undersigned could do in regards to the claim for, transfer or distribution of the monies, credits or assets due to him/her. The undersigned grants to said attorney-in-fact full power and authority to receive the monies in the name and on behalf of the undersigned and to give a receipt and discharge for the same in his/her name and on his/her behalf. No person who pays the claim for monies or funds in favor of the undersigned will be required to verify the ultimate disposition of the same.

This Petition on Claim Under Notarial Oath is not intended to limit the powers of the attorney-in-fact, but to indicate that he has the full authority to do each and every necessary thing that the undersigned could do in relation to the matter mentioned in the FIRST paragraph.

For value received and for services rendered, the undersigned does hereby convey, assign and transfer to ATTY. JOSE R. FRANCO-RIVERA, his agents, legal representatives, counsellors, and successors and assigns a fee of thirty-three and one third per cent (33.33%) as fee for the search, legal expenses, attorney's fees, ordinary and extraordinary expenses, which will be paid to ATTY. JOSE R. FRANCO-RIVERA only upon ATTY. JOSE R. FRANCO-RIVERA as attorney-in-fact having satisfactorily received the funds on behalf of the undersigned. That prior to the successful collection of said funds, no expense or cost whatsoever will be paid in advance by the undersigned.

The undersigned binds himself/herself at all times to indemnify ATTY. JOSE R. FRANCO-RIVERA, his agents, their respective legal representatives, successors and

assigns, and any city, county, state government and federal government, their officers and employees (hereinafter the "Obligee(s)") and hold them harmless from all claims, actions and lawsuits, whether groundless or otherwise, and from and against all liabilities, losses, damages, judgments, costs and expenses, attorneys' fees and other expenses of every nature or character by reason of honoring or refusing to honor the original evidence of ownership when presented by or on behalf of the holder in due course of time, or a holder who appears to be or the Obligees believe is such, or the making of any payment, delivery or credit in respect to the original evidence of ownership without surrender thereof, whether or not caused by, or based upon, or arising out of inadvertence, accident, oversight, neglect or omission or failure to inquire into, contesting or litigate the right of any applicant to receive any payment, credit, transfer, registration, exchange or delivery in relation to the original evidence of ownership, or caused by, based upon or arising out of any other matter or thing whatsoever.

This PETITION FOR CLAIM OF FUNDS UNDER NOTARIAL OATH to request the recovery of funds is specifically limited to the funds identified in the FIRST paragraph, which have not been claimed by the undersigned for a period of not less than five (5) years. These funds do not include any tax refunds, benefits, payments, credits, dividends or monies that have not been claimed by the undersigned for a period of five (5) years.

Date 8 Oct. 90

/Sgd/ R.J. McConnie M.D.
Signature

Affidavit # 2487

Sworn to and Subscribed before me by Randolph J. McConnie, of legal age, married, freeholder, physician and resident of Río Piedras, Puerto Rico, whom I attest I personally know. In San Juan, Puerto Rico, this 8th day of October 1990.

/Sgd/ (Unreadable)
Attorney-Notary

(Seal)
(There appears the Round Notarial Seal of **Ernesto Valderas-Fernández, Attorney-Notary**).

---

**- CERTIFIED -**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION:

---

JUAN M. MASINI-SOLER, ESQ.
461 Ponce de León Avenue, Suite 210
Hato Rey, Puerto Rico 00917

Tel. 753-3692

**CLAIM FOR FUNDS UNDER NOTARIAL OATH**

(Handwritten): 2,124.55

CITY OF MANATI

COMMONWEALTH OF PUERTO RICO

(Handwritten): 336-215873

I, Miguelina Muñoz-Trinidad (Social Security # 580-46-8158) Account # 336210423, as owner of funds in the amount of $2,261.35 approximately, arising from abandoned property, unclaimed property, assets of a dissolved or existing Corporation, unclaimed dividends or corporate distribution, proceeds of a life insurance policy, or funds arising from an inheritance or other escheated property, under notarial oath state and say the following:

That I am of legal age and that I have the legal standing to sign this document and that I reside in the aforesaid City of the Commonwealth of Puerto Rico.

That the Department of Recovery of Assets of the Law Office of ATTY. JUAN M. MASINI-SOLER has done the work of investigating, tracing and establishing that the undersigned may be entitled to the funds indicated in the FIRST paragraph and that the undersigned wishes to recover said funds.

The undersigned does hereby appoint ATTY. JUAN M. MASINI-SOLER, his Representatives, Counsellors and Attorneys as his/her attorneys-in-fact to act in his/her name, place and stead in relation to all matters that the undersigned could do in regards to the claim for, transfer or distribution of the monies, credits or assets due to him/her. The undersigned grants to said attorney-in-fact full power and authority to receive the monies in the name and on behalf of the undersigned and to give a receipt and discharge for the same in his/her name and on his/her behalf. No person who pays the claim for monies or funds in favor of the undersigned will be required to verify the ultimate disposition of the same.

This Petition on Claim Under Notarial Oath is not intended to limit the powers of the attorney-in-fact, but to indicate that he has the full authority to do each and every necessary thing that the undersigned could do in relation to the matter mentioned in the FIRST paragraph.

For value received and for services rendered, the undersigned does hereby convey, assign and transfer to ATTY. JUAN M. MASINI-SOLER, his agents, legal representatives, counsellors, and successors and assigns a fee of thirty-three and one third per cent (33.33%) as fee for the search, legal expenses, attorney's fees, ordinary and extraordinary expenses, which will be paid to ATTY. JUAN M. MASINI-SOLER only upon ATTY. JUAN M. MASINI-SOLER as attorney-in-fact having satisfactorily received the funds on behalf of the undersigned. That prior to the successful collection of said funds, no expense or cost whatsoever will be paid in advance by the undersigned.

The undersigned binds himself/herself at all times to indemnify ATTY. JUAN M. MASINI-SOLER, his agents, their respective legal representatives, successors and assigns, and any city, county, state government and federal government, their officers and employees (hereinafter the "Obligee(s)") and hold them harmless from all claims, actions and lawsuits, whether groundless or otherwise, and from and against all liabilities, losses, damages, judgments, costs and expenses, attorneys' fees and other expenses of every nature or character by reason of honoring or refusing to honor the original evidence of ownership when presented by or on behalf of the holder in due course of time, or a holder who appears to be or the Obligees believe is such, or the making of any payment, delivery or credit in respect to the original evidence of ownership without surrender thereof, whether or not caused by, or based upon, or arising out of inadvertence, accident, oversight, neglect or omission or failure to inquire into, contesting or litigate the right of any applicant to receive any payment, credit, transfer, registration, exchange or delivery in relation to the original evidence of ownership, or caused by, based upon or arising out of any other matter or thing whatsoever. This PETITION FOR CLAIM OF FUNDS UNDER NOTARIAL OATH to request the recovery of funds is specifically limited to the funds identified in the FIRST paragraph, which have not been claimed by the undersigned for a period of not less than five (5) years. These funds do not

include any tax refunds, benefits, payments, credits, dividends or monies that have not been claimed by the undersigned for a period of five (5) years.

Date 4 October 1991

/Sgd/ Isabel Trinidad-Rosario
Witness to the Mark

---

Signature

Affidavit # 32515

Sworn to and Subscribed before me by Miguelina Muñoz-Trinidad, of legal age, housewife and resident of Vega Baja, Puerto Rico, whom I attest I personally know, in Manatí, Puerto Rico, on this 4th day of October 1991.

/Sgd/ (Unreadable)
Attorney-Notary

(Seal)
(There appears an Unreadable Round Notarial Seal).

---

**- CERTIFIED -**

To be a correct translation prepared by:
/s/ Ernesto Quidgley - 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION: ANNEX III

Commonwealth of Puerto Rico
Department of Justice
Office of the Solicitor General
P.O. Box 192, San Juan, PR 00902

**CERTIFIED, RETURN RECEIPT REQUESTED**

18 February 1992

Mr. Juan M. Masini-Soler, Esq.
P.O. Box 3367
Old San Juan, Puerto Rico 00904

Re: Administrative Complaint against Atty. José R. Franco, File #91-263

Dear attorney Masini-Soler:

Atty. Ismael Herrero Jr. has filed an administrative complaint against you at this Office. In synthesis, the complainant alleges the following:

1. That his office represents Banco Santander de Puerto Rico and Santander Federal Savings Bank.

2. That in recent months several of the bank's clients have indicated to him that they have received information sent by you wherein you indicate to them that you have detected certain funds that belong to said person and that if he/she is interested in recovering them he/she should sign a petition to those effects before a notary so that you can take action on their behalf.

3. That said conduct on your part constitutes an activity with pecuniary ends for a service that has not

been requested from you, violating with said conduct Rule 38 of Professional Ethics.

We request that within a term of fifteen (15) days following receipt of the instant communication, you offer us your version of this complaint so that we will have more elements of judgment in our investigation.

Cordially,

/Sgd/ Anabelle Rodriguez
Anabelle Rodriguez
Solicitor General

Reina Colón de Rodriguez
Deputy Solicitor General

/Sgd/ Yvonne Casanova Pelosi
Yvonne Casanova-Pelosi
Assistant Solicitor General

rr

---

- CERTIFIED -
To be a correct translation prepared by:
/s/ Ernesto Quidgley - 8-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8338

CERTIFIED TRANSLATION: ANNEX IV

Commonwealth of Puerto Rico
Department of Justice
Office of the Solicitor General
P.O. Box 192, San Juan, PR 00902

26 December 1991

Mr. José R. Franco-Rivera, Esq.
P.O. Box 4292
Old San Juan Station
San Juan, Puerto Rico 00902

Dear attorney Franco:

Atty. Ismael Herrero Jr. has filed an administrative complaint against you at this Office. In synthesis, the complainant alleges the following:

1. That his office represents Banco Santander de Puerto Rico and Santander Federal Savings Bank.

2. That in recent months several of the bank's clients have indicated to him that they have received information sent by you wherein you indicate to them that you have detected certain funds that belong to said person and that if he/she is interested in recovering them he/she should sign a petition to those effects before a notary so that you can take action on their behalf.

3. That said conduct on your part constitutes an activity with pecuniary ends for a service that has not been requested from you, violating with said conduct Rule 34 of Professional Ethics.

We request that within a term of fifteen (15) days following receipt of the instant communication, you offer us your version of this complaint so that we will have more elements of judgment in our investigation.

Cordially,

Anabelle Rodríguez
Solicitor General

/Sgd/ (Unreadable)
Reina Colón de Rodríguez
Deputy Solicitor General

/Sgd/ Yvonne Casanova Pelosi
Yvonne Casanova-Pelosi
Assistant Solicitor General

CERTIFIED, RETURN RECEIPT REQUESTED

---

- CERTIFIED -
To be a correct translation prepared by:
/s/ Ernesto Quidgley - 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION: ANNEX V

**FRANCO-ATTORNEYS**
**Law and Notarial Office**
3 February 1991
San Juan, Puerto Rico

**CERTIFIED, RETURN RECEPT REQUESTED**

**Mrs. Anabelle Rodríguez**
**Solicitor General**
**Mrs. Yvonne Casanova-Pelosi**
**Assistant Solicitor General**
**P.O. Box 192**
**San Juan, Puerto Rico 00902**

RE: **Administrative Complaint against**
**Atty. José R. Franco**
**File # 91-263**

Dear attorney Rodríguez
and attorney Casanova:

I greatly regret the decision made by you to the effects of not wanting to furnish me more precise information

to reply to all of the extremely general allegations established against me in your letter of 26 December 1991. This at all lights places me in an extremely disadvantaged and uninformed position to be able to answer throroughly and responsibly; even so, I will attempt to do so as well as possible.

(There is a Date/Time Stamp at the right-hand margin: DEPARTMENT OF JUSTICE, SOLICITOR GENERAL'S OFFICE, RECEIVED **92 FEB -5 PM 1:11**.)

P.O. Box 4292, Old San Juan Station
San Juan, Puerto Rico 00902
Tel. (809) 723-7089

I do not know the motivations that Atty. Herrero may have had in order to file the administrative complaint at hand. The only thing that I can say is that I, José R. Franco, a citizen like any other but who happen to be an attorney, sent a certain notice to countless persons wherein I offered them the service of submitting a petition signed by them before a notary, in order to recover for them certain funds (that belong to them) deposited in Bank accounts in Puerto Rico.

If I take the third allegation of your letter of the aforesaid date as part of what was indicated by Atty. Herrero, I do not know the grounds whereon the latter rests in order to allege that said activity violates Rule 34 of Professional Ethics.

As I read and interpret the aforesaid Rule, the same is addressed to prohibit an attorney, *acting in his capacity and as such*, to offer and/or solicit work of a *legal nature* from future or prospective clients. I consider that the services offered in no manner differ (to these effects) for

example, from those offered by certain persons in Puerto Rico who provide the service of renewing driver's licenses on behalf of others.

I trust that in this manner I have responded as adequately as possible to the allegations brought against me.

Sincerely,

/Sgd/ (Unreadable)
José R. Franco-Rivera

---

**– CERTIFIED –**

To be a correct translation prepared by:
/s/ Ernesto Quidgley – 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION: ANNEX VI

**JUAN M. MASINI-SOLER**
**ATTORNEY-AT-LAW & NOTARY PUBLIC**

(Stamped): **92 MAR -2 AM 11:08**

**PENTHOUSE 1**
**ESQUIRE BUILDING**
**(VELA ST., HATO REY)**
**SAN JUAN, P.R. 00918-3622**

**TEL. (809) 751-0447**
**FAX: (809) 751-7806**

27 February 1992

Ms. Yvonne Casanova-Pelosi, Esq.
Assistant Solicitor General
Department of Justice
P.O. Box 192
San Juan, P.R. 00902

Re: File #91-263

Dear Atty. Casanova:

I refer to your letter dated on the 18th of the running month and year, about the case file at caption.

Since I know and appreciate the complainant, Atty. Ismael Herrero, Jr., I took the liberty of calling him to attempt to clarify any misunderstanding in this matter. In fact, I had already a written communication with him (photocopy enclosed), which is self-explanatory.

I understand that after this telephone conversation of 26 February 1992 the matter was duly clarified and to Mr. Herrero's satisfaction, who told me that he would communicate with you shortly to those effects. I pray that once you receive the communication from Mr. Herrero, you consider this matter closed, about which I offer my most sincere apology, both to your Office and to Atty.

Herrero, for any inconveniences that inadvertently and acting in good faith I may have caused.

Having nothing further on the subject, I remain,

Sincerely,

/Sgd/ J. Masini
Juan M. Masini-Soler

JMMS:il
cc: Mr. Ismael Herrero, Jr., Esq.

---

**– CERTIFIED –**
To be a correct translation prepared by:
/s/ Ernesto Quidgley – 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION:

**JUAN M. MASINI-SOLER**
**ATTORNEY-AT-LAW & NOTARY PUBLIC**

**PENTHOUSE 1**
**ESQUIRE BUILDING**
**(VELA ST., HATO REY)**
**SAN JUAN, P.R. 00918-3622**

**TEL. (809) 751-0447**
**FAX: (809) 751-7806**

15 November 1991

Mr. Ismael H. Herrero, Jr., Esq.
P.O. Box 11550
San Juan, P.R. 00922-1550

Re: Miguelina Muñoz-Trinidad
Accounts 336-210423; 336-215873
Bco. Santander Puerto Rico
Manatí Branch
Social Security 580-46-8158

Dear Ismael:

I thank you for your letter of 5 November 1991 about the matter at caption.

I do not know the issue that is currently *sub-judice* in relation to Atty. José R. Franco-Rivera, whom I do not know and with whom I do not have any type whatsoever of a professional nor personal nature. I understand that the claim made is permissible and in compliance with the requirements of the law.

Nevertheless, before the Bank's refusal to honor said claim for funds, I will be informing the claimants in writing about such decision of the Bank and informing them to proceed and make their claim directly. I believe that in this manner I am responsibly discharging my duty towards said claimants. On the other hand, I understand

that, on its day, the Bank could be liable for damages, if any, suffered by the claimant and/or his/her attorney because of the Bank's refusal to honor the claim for funds under notarial oath.

Cordially,
/Sgd/ J. Masini
JUAN M. MASINI-SOLER

JMMS:il

---

**- CERTIFIED -**
To be a correct translation prepared by:
/s/ Ernesto Quidgley - 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION: ANNEX VII

**JUAN M. MASINI-SOLER**
**ATTORNEY-AT-LAW & NOTARY PUBLIC**

**PENTHOUSE 1**
**ESQUIRE BUILDING**
**(VELA ST., HATO REY)**
**SAN JUAN, P.R. 00918-3622**

**TEL. (809) 751-0447**
**FAX: (809) 751-7806**

15 November 1991

Mr. Ismael H. Herrero, Jr., Esq.
P.O. Box 11550
San Juan, P.R. 00922-1550

Re: Miguelina Muñoz-Trinidad
Accounts 336-210423; 336-215873
Bco. Santander Puerto Rico
Manatí Branch
Social Security 580-46-8158

Dear Ismael:

I thank you for your letter of 5 November 1991 about the matter at caption.

I do not know the issue that is currently *sub-judice* in relation to Atty. José R. Franco-Rivera, whom I do not know and with whom I do not have any type whatsoever of a professional nor personal nature. I understand that the claim made is permissible and in compliance with the requirements of the law.

Nevertheless, before the Bank's refusal to honor said claim for funds, I will be informing the claimants in writing about such decision of the Bank and informing them to proceed and make their claim directly. I believe that in this manner I am responsibly discharging my duty towards said claimants. On the other hand, I understand

that, on its day, the Bank could be liable for damages, if any, suffered by the claimant and/or his/her attorney because of the Bank's refusal to honor the claim for funds under notarial oath.

Cordially,

/Sgd/ J. Masini
JUAN M. MASINI-SOLER

JMMS:il

---

**- CERTIFIED -**

To be a correct translation prepared by:
/s/ Ernesto Quidgley - 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION: ANNEX VIII

**Juan M. Masini-Soler** **TEL. 751-0447 - 753-3692**
**Attorney-At-Law & Notary Public**
**P.O. Box 3367**
**Old San Juan, Puerto Rico 00904**

Dr. Héctor Ortiz-Sambolin
# 14 Villa Anita
LAJAS, P.R. 00667

Re: Amount $3,970.01
Banco Santander de P.R.
PONCE and SAN JUAN Branches

Dear client:

You recently authorized us, through Claim for Funds Under Notarial Oath, to locate and withdraw in your name and on your behalf the amount indicated above. To those effects we undertook the pertinent actions with the depository of the same, Banco Santander de Puerto Rico, who has refused to reimburse the same alleging that the document signed by you is not acceptable to their Legal Division. We disagree with the Bank in this regard and we understand that they have assumed an arbitrary attitude and both to the detriment of your interests as well as ours.

Our agreement was to the effects that we would locate and forward your money to you, less our professional fees. Nevertheless, in attention to our professional responsibility, we inform you that the amount to which you are entitled is the one shown above and that you can claim it directly at the Branch at caption. At not being able to comply with part of that agreement for the

aforesaid reasons beyond our control, we believe it is fair to reduce the same from 33 1/3% to 20%.

We would appreciate that when you withdraw the unclaimed amount you remit to us 20% of the net amount received to the following address: 461 Ponce de León Ave., John Morris Bldg., Suite 200, Hato Rey, P.R. 00918. We remind you that without our intervention you would not have learned that those unclaimed funds belonged to you. That is the importance of our careful and tedious investigative work.

We suggest that you withdraw those funds prior to 9 December 1991, the date when they go under the custody of the Department of the Treasury. If you have any doubt or question, I ask you to call me at 753-3692.

Sincerely,

/Sgd/ J. Masini
Juan M. Masini-Soler, Esq.
11/11/91

cc: Banco Santander de Puerto Rico
Legal Division
Atty. Ismael H. Herrero, Jr.
P.O. Box 11550
SAN JUAN, P.R. 00902

---

**– CERTIFIED –**

To be a correct translation prepared by:
/s/ Ernesto Quidgley – 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION:

**Juan M. Masini-Soler** **TEL. 751-0447 - 753-3692**
**Attorney-At-Law & Notary Public**
**P.O. Box 3367**
**Old San Juan, Puerto Rico 00904**

Unclaimed accounts of José A. Castro-Cruz and Celia M. Castro-Cruz.

Mrs. Lydia E. Cruz-Díaz
RR 8 Box 9626
Santa Olaya
BAYAMON, P.R. 00957

Re: Amount $676.30 and $759.83
Banco Santander de P.R.
Branch #009-BANCO SANTANDER, Bayamón Pablo Vega, Manager, Tel. 785-2040 This bank used to be CAGUAS CENTRAL.

Dear client:

You recently authorized us, through Claim for Funds Under Notarial Oath, to locate and withdraw in your name and on your behalf the amount indicated above. To those effects we undertook the pertinent actions with the depository of the same, Banco Santander de Puerto Rico, who has refused to reimburse the same alleging that the document signed by you is not acceptable to their Legal Division. We disagree with the Bank in this regard and we understand that they have assumed an arbitrary attitude and both to the detriment of your interests as well as ours.

Our agreement was to the effects that we would locate and forward your money to you, less our professional fees. Nevertheless, in attention to our professional responsibility, we inform you that the amount to which you are entitled is the one shown above and that you can claim it directly at the Branch at caption. At not being able to comply with part of that agreement for the aforesaid reasons beyond our control, we believe it is fair to reduce the same from 15 1/2%, to 20%.

We would appreciate that when you withdraw the unclaimed amount you remit to us 20% of the net amount received to the following address: 441 Ponce de Leon Ave., John Morris Bldg., Suite 200, Hato Rey, P.R. 00918. We remind you that without our intervention you would not have learned that those unclaimed funds belonged to you. That is the importance of our careful and tedious investigative work.

We suggest that you withdraw those funds prior to 9 December 1991, the date when they go under the custody of the Department of the Treasury. If you have any doubt or question, I ask you to call me at 753-5642.

Sincerely,

/Sgd./ J. Morris
Jesús M. Morris-Soler, Esq.
11/11/91

cc: Banco Santander de Puerto Rico
Legal Division
Atty. Ismael H. Herrero, Jr.
P.O. Box 11350
SAN JUAN, P.R. 00922

– CERTIFIED –
To be a correct translation prepared by:
/s/ Ernesto Quidgley – 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION:

**Juan M. Masini-Soler** **TEL. 751-0447 - 753-3692**
**Attorney-At-Law & Notary Public**
**P.O. Box 3367**
**Old San Juan, Puerto Rico 00904**

Mrs. Miguelina Muñoz-Trinidad
Public Market, Post # 2
VEGA BAJA, P.R. 00693

Re: Amount $2,261.35
Banco Santander de P.R.
MANATI Branch,
Ernesto F. Parisse, Manager
Branch (036)

Dear client:

You recently authorized us, through Claim for Funds Under Notarial Oath, to locate and withdraw in your name and on your behalf the amount indicated above. To those effects we undertook the pertinent actions with the depository of the same, Banco Santander de Puerto Rico, who has refused to reimburse the same alleging that the document signed by you is not acceptable to their Legal Division. We disagree with the Bank in this regard and

we understand that they have assumed an arbitrary attitude and both to the detriment of your interests as well as ours.

Our agreement was to the effects that we would locate and forward your money to you, less our professional fees. Nevertheless, in attention to our professional responsibility, we inform you that the amount to which you are entitled is the one shown above and that you can claim it directly at the Branch at caption. At not being able to comply with part of that agreement for the aforesaid reasons beyond our control, we believe it is fair to reduce the same from 33 1/3% to 20%.

We would appreciate that when you withdraw the unclaimed amount you remit to us 20% of the net amount received to the following address: 461 Ponce de León Ave., John Morris Bldg., Suite 200, Hato Rey, P.R. 00918. We remind you that without our intervention you would not have learned that those unclaimed funds belonged to you. That is the importance of our careful and tedious investigative work.

We suggest that you withdraw those funds prior to 9 December 1991, the date when they go under the custody of the Department of the Treasury. If you have any doubt or question, I ask you to call me at 753-3692.

Sincerely,

/Sgd/ J. Masini
Juan M. Masini-Soler, Esq.
11/11/91

cc: Banco Santander de Puerto Rico
Legal Division

– CERTIFIED –
To be a correct translation prepared by:
/s/ Ernesto Quidgley – 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION:

**Juan M. Masini-Soler** **TEL. 751-0447 - 753-3692**
**Attorney-At-Law & Notary Public**
**P.O. Box 3367**
**Old San Juan, Puerto Rico 00904**

Mr. Edwin Cruz-Méndez
1992 Francisco Zuñiga St.
Fair View Dev.
RIO PIEDRAS, P.R. 00926

Re: Amount $880.83
Banco Santander de P.R.
Branch #013 – formerly
CAGUAS FEDERAL, Caparra,
Octavio Rodríguez, Manager

Dear client:

You recently authorized us, through Claim for Funds Under Notarial Oath, to locate and withdraw in your name and on your behalf the amount indicated above. To those effects we undertook the pertinent actions with the depository of the same, Banco Santander de Puerto Rico, who has refused to reimburse the same alleging that the document signed by you is not acceptable to their Legal

Division. We disagree with the Bank in this regard and we understand that they have assumed an arbitrary attitude and both to the detriment of your interests as well as ours.

Our agreement was to the effects that we would locate and forward your money to you, less our professional fees. Nevertheless, in attention to our professional responsibility, we inform you that the amount to which you are entitled is the one shown above and that you can claim it directly at the Branch at caption. At not being able to comply with part of that agreement for the aforesaid reasons beyond our control, we believe it is fair to reduce the same from 33 1/3% to 20%.

We would appreciate that when you withdraw the unclaimed amount you remit to us 20% of the net amount received to the following address: 461 Ponce de León Ave., John Morris Bldg., Suite 200, Hato Rey, P.R. 00918. We remind you that without our intervention you would not have learned that those unclaimed funds belonged to you. That is the importance of our careful and tedious investigative work.

We suggest that you withdraw those funds prior to 9 December 1991, the date when they go under the custody of the Department of the Treasury. If you have any doubt or question, I ask you to call me at 753-3692.

Sincerely,

/Sgd/ J. Masini
Juan M. Masini-Soler, Esq.
11/11/91

cc: Banco Santander de Puerto Rico
Legal Division
Ms. Adela Surillo, Esq.
P.O. Box 11550
SAN JUAN, P.R. 00922

---

**- CERTIFIED -**

To be a correct translation prepared by:
/s/ Ernesto Quidgley - 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

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## APPENDIX I

CERTIFIED TRANSLATION:

IN THE SUPREME COURT OF PUERTO RICO

IN RE:

(Stamped):
**1992 MAR 18 AM 8:34**
FILED
CLERK'S OFFICE
SUPREME COURT OF PR

ATTY. JOSE R. FRANCO-RIVERA
ATTY. JUAN M. MASINI-SOLER

## MOTION

TO THE HONORABLE COURT:

Comes now Atty. Juan M. Masini-Soler, *pro se*, and very respectfully STATES, ALLEGES and PRAYS:

1. On 10 March 1992 the herein appearing attorney received via certified mail, return receipt requested, the Solicitor General's Report in the case at caption, dated 6 March 1992.

2. It is stated in said Report, *inter alia*, that the undersigned in his appearance at that Office offered his apologies for the inconveniences that inadvertently and acting in good faith could have been caused. I respectfully understand that in the manner that said Report is worded it could be construed that my mentioned "appearance" through a letter dated 27 February 1992, Annex VI to the Report, could be the undersigned's final and definitive position in regards to the administrative complaint; nothing could be farther from the truth.

3. In the letter from the Assistant Solicitor General to the undersigned, dated 18 February 1992, Annex III to the Report, there was no indication as to the scope and/or depth of the administrative complaint by Atty. Ismael H. Herrero, Jr., Annex I to the report. In fact, said letter indicated only that Atty. Herrero had filed an administrative complaint against me, which the Solicitor General's Office synthethized in three short paragraphs alluding to Rule 34 of Professional Ethics. It did not arise from that letter that the administrative complaint had been filed by Atty. Herrero on 18 November 1991; neither did the actions that the Solicitor General's Office had carried out with the other respondent, Atty. José R. Franco, since 26 December 1991; nor did his actions with the Solicitor General's Office.

4. For such reason, I understood that Atty. Herrero's administrative complaint had been a recent one and probably due to a misunderstanding and/or lack of communication between he and I. To those effects, I took the liberty to call Atty. Herrero, whom I have known since some time ago and I appreciate both personally and professionally, in an attempt to clarify the matter. It did not arise in said conversation that the administrative complaint had been filed in November, but indeed, to my understanding, that Atty. Herrero was satisfied with the explanations given. To those effects I informed him that I would be writing to the Solicitor General to inform about the conversation and that I understood that he had been satisfied, wherefore I would appreciate it if he would confirm this in writing to the Solicitor General's Office. Therefrom my letter of 27 February 1992, (which is identified in the Report as my "appearance"), as well as the one

from Atty. Ismael Herrero of 5 March 1992 to said Office, *which is attached to this Motion as Annex I.* It can be noted that in his letter of 5 March 1992, Atty. Herrero confirms my communication with him.

5. It is for such reasons that what the Solicitor General's Report indicates is my "appearance" is really a communication wherein I explain that I understand that the issues brought forth in the administrative complaint have been clarified; very particularly because I believed that this matter was in its very early stages and not necessarily in what it turned out, without my knowledge, to be. In fact, the letter from the Solicitor General's Office to the undersigned is dated as of the 18th of February, placed in the mails on the 19th and received by me on the 25th; since the same was sent to my post office box address, located in Old San Juan, which I visit only once or twice a week. I immediately contacted Atty. Herrero and two days later I answered the letter from the Solicitor General's Office. Since the letter from the Solicitor General, of a relatively informal style, requested that we offer them our version of the administrative complaint within fifteen (15) days following receipt of the same, so that they would have more elements of judgment in the investigation, never did I understand that the next step in said investigation, barely three (3) or four (4) working days after receiving my reply, would be the filing of a formal complaint; and much less a formal complaint in which an additional issue is brought forth in regards to Rule 35, which was never mentioned in the Solicitor General's letter to us of 18 February 1992.

6. I really thought that once my letter and Atty. Herrero's letter were received, the matter would be duly

clarified and quite probably the case would be closed, or perhaps some additional information would be requested from me and/or Atty. Herrero. In fact, although in my letter of 27 February I indicate to the Solicitor General's Office that Atty. Herrero would be contacting them, I must presume that the Report was written prior to receiving Atty. Herrero's letter, since the same is dated one day prior to the date of the Solicitor General's Report.

7. I believed it pertinent to clarify this matter preliminarily for this Honorable Supreme Court, for the purpose of requesting that should it be understood, after reading Atty. Herrero's letter of 5 March, that from the face of the Solicitor General's Report there arises any type of violation of Rule 34, and very particularly of Rule 35, I be afforded the opportunity, prior to proceeding with further processing, to submit the brief that I would have submitted to the Solicitor General's Office had I had the elements of judgment and the knowledge that I have today in regards to the administrative complaint, its scope, contents and depth. In the alternative, that the case file be remanded (at least as it pertains to the undersigned) to the Solicitor General's Office so as to allow me to file thereat the aforesaid brief.

WHEREFORE, Atty. Juan M. Masini-Soler, appearing herein *pro se*, very respectfully prays of this Honorable Court that, should it understand that from the face of the Solicitor General's Report it arises that the undersigned might have incurred in any violation of Rules 34 and/or 35 of our profession, I be afforded the opportunity to appear, in writing, under one of the alternatives mentioned above and to present my position in that regard in a more formal manner, in attention to the foregoing.

I CERTIFY: That I have forwarded a copy of this document to Ms. Yvonne Casanova-Pelosi, Esq., Assistant Solicitor General, Department of Justice, P.O. Box 192, Old San Juan, P.R. 00902 and to Mr. Ismael H. Herrero, Jr., Esq. P.O. Box 11550, San Juan, P.R. 00922.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on 17 March 1992.

/Sgd/ Juan M. Masini Soler
JUAN M. MASINI-SOLER, ESQ.
PENTHOUSE 1, ESQUIRE BLDG.
HATO REY, P.R. 00918-3622
TEL. 751-0447 BM-9332

(The handwritten initials JM appear at the lower left-hand corner of every page.)

---

**- CERTIFIED -**
To be a correct translation prepared by:
/s/ Ernesto Quidgley - 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION: *ANNEX I*

LAW OFFICES
**GONZALEZ-OLIVER, CORREA-CALZADA, COLLAZO-SALAZAR, HERRERO & JIMENEZ**
POST OFFICE BOX 11550
SAN JUAN, PUERTO RICO 00922-1550

W. GONZALEZ-OLIVER
M. CORREA-CALZADA
B. COLLAZO-SALAZAR
I.H. HERRERO, JR.
P.A. JIMENEZ
M.L. CORREA-MARQUEZ
I.H. HERRERO III
O.P. GOBLE
R. GUZMAN
P. RIVERA-MATOS
A. SURILLO
J.G. BAREA
F.R. FIGUEROA
S.G. GONZALEZ

TELEPHONE (809) 793-5000
BANCO SANTANDER
PUERTO RICO BLDG
1508 F.D. ROOSEVELT
AVENUE
SAN JUAN, PUERTO RICO
CABLE ADDRESS:
"COCOHER"
FAX NO. 793-5007

SANTANDER FEDERAL
SAVINGS BUILDING
ROAD NO. 2 CORNER
ROAD NO. 167
BAYAMON, PUERTO RICO
TELEPHONE (809) 798-2710
FAX NO. 798-2717

(Stamped):
**RECEIVED**
**MAR 9 1992**

JUAN M. MASINI-SOLER
ATTORNEY-AT-LAW
NOTARY PUBLIC

5 March 1992

Hon. Yvonne Casanova-Pelosi
Assistant Solicitor General
Department of Justice
P.O. Box 192
San Juan, Puerto Rico 00902

RE: Case File 91-263, Juan M. Masini-Soler

Dear attorney Casanova:

I refer to the case at caption, wherein I filed an administrative complaint in compliance with the obligation imposed by the provisions of Rule 34 of Professional Ethics.

On a recent date attorney Masini contacted me on the particular in order to clarify any misunderstanding about the matter.

I manifested to attorney Masini that I recognized and accepted that he had desisted from his efforts to require from my client, Banco Santander Puerto Rico, the payments of sums from inactive accounts of depositors of the Bank and that he had so informed said depositors. I also informed him that I had forwarded to the Solicitor General's Office copies of his correspondence to me and to said depositors (which he had furnished to me).

I indicated to attorney Masini that I have never harbored any personal interest whatsoever in the case nor the intention of damaging him, since I moved on the administrative complaint only in compliance with Rule 34 of Professional Ethics.

I allow myself to inform you all of the foregoing although I recognize that once the administrative complaint is filed in the discharge of the obligation under the Rules of Professional Ethics, further processing of the case pertains to the Solicitor General and the final decision is under the competence and jurisdiction of the

Honorable Supreme Court of Puerto Rico and not of the complainant.

Cordially,

/Sgd/ (Unreadable)
Ismael H. Herrero, Jr.

IHH/arm
a:yvonecas.car
letters/5.1

cf: Mr. Juan M. Masini-Soler, Esq.

---

**- CERTIFIED -**

To be a correct translation prepared by:
/s/ Ernesto Quidgley - 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

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## APPENDIX J

CERTIFIED TRANSLATION:

IN THE SUPREME COURT OF PUERTO RICO

| | | |
|---|---|---|
| IN RE: | ) | NO. AB-92-24 |
| ATTYS. | ) | (Stamped): |
| JOSE R. FRANCO-RIVERA | ) | **1992 MAY -4** |
| AND | ) | **PM 3:43** |
| JUAN M. MASINI-SOLER | ) | FILED |
| | ) | CLERK'S OFFICE |
| | | SUPREME COURT OF PR |

### REPLY TO SOLICITOR GENERAL'S REPORT

TO THE HONORABLE COURT:

Comes now Atty. Juan M. Masini-Soler through his undersigned attorney and very respectfully STATES, ALLEGES and PRAYS:

1. On 6 March 1992 the Solicitor General's Office filed in this Court the Report object of this Reply. From said Report it is easy to surmise that the controversy in the instant case gears around determining whether a printed letter that the herein appearing party remitted to several persons, to claim in their name monies from financial institutions, is part of the right to freedom of speech guaranteed for all citizens under Section 4 of Article II of the Constitution of the Commonwealth of Puerto Rico and the First and Fourteenth Amendments to the Constitution of the United States of America.

2. Although the Report refers to attorneys José R. Franco-Rivera and Juan M. Masini-Soler, there does not

exist nor has there ever existed any relationship whatsoever, be it professional, commercial, business, etc., between Atty. Franco-Rivera and Atty. Juan M. Masini-Soler. The instant appearance, then, is made only and exclusively in relation to Atty. Juan M. Masini-Soler.

3. The Puerto Rico Banking Law, 7 LPRA Sec. 2101 *et seq.*, imposes on the Financial Institutions on the Island the obligation to publish once during the month of August and the month of September, in a newspaper of general circulation, a notice titled "Notice of Monies and Other Unclaimed Liquid Assets Held by (name of the Financial Institution or Holder)." This notice must contain, among other things, the names of the persons entitled to claim said monies and other liquid assets, as well as their last known address and the amounts of money or other liquid assets to which they are entitled.

4. A situation similar to the foregoing occurs in regards to insurance companies and general agents, as set forth in the Puerto Rico Insurance Code, 26 LPRA 2601 *et seq.*

5. It was in attention to notices of the aforesaid nature that the herein appearing party forwarded a written communication to some of the owners of said funds. See Annex II to the Solicitor General's Report. It arises from said Notice that the person to whom the communication was sent would enter into a contract freely and voluntarily, whereby the herein appearing party would claim said funds in consideration of the fees therein fixed.

6. Once the herein appearing party received the claim, duly sworn, communications would be established with the Financial Institution or the insurance company,

the money was recovered and several days later the amount that corresponded to the owner would be remitted to the same, with an itemization of the action showing:

A. Who was the depository or holder of the funds;

B. What had been the amount claimed;

C. What was the amount for expenses incurred by the bank in relation to the publication, a sum which they had deducted from the amount of the claim;

D. The net amount to be reimbursed.

7. The herein appearing party processed approximately 150 of said claims with several financial institutions and insurance companies in Puerto Rico, of which only approximately 35 were honored.

8. In the processing of recovery of funds, the herein appearing party acted responsibly and faithfully complying with the task that the claimants freely and voluntarily gave him. The actions were carried out promptly and the funds collected were remitted rapidly.

9. The herein appearing party rendered a professional service and received certain fees therefor when he alerted some persons who were entitled to claim certain funds. It can not be said that they were being incited to make a groundless claim when it is the financial institution itself who is inviting the owners of the funds to claim the same in accordance with the provisions of law.

10. It is, then, easy to observe that the actions of the herein appearing party did not constitute an offer of legal counsel and advice addressed, in some manner, to the

initiation of judicial claims or claims of any other nature, nor do they constitute an overreach into possible sources or causes for claims. Rule 34. The conduct of the undersigned was sincere and honest. There was no deceit, neither of the claimants nor of the financial institutions.

11. On page 2 of the Report, second paragraph, it is stated that it does not arise from the Notice sent to the claimants that the depositor is informed or oriented about the alternative that the latter has of making his/her collection efforts personally with the banking institution, without finding himself/herself in the need to retain the services of an attorney. With the greatest respect, we submit that the herein appearing party had no obligation whatsoever to the effects pointed out. Instead, it was the bank concerned who, in any event, should have perhaps given such warning to the owner of the funds because of the contractual and commercial relationship existing between them since at least five years earlier. On the other hand, the person who received the letter remitted by the herein appearing party had the most perfect right to disregard it. There existed no obligation on the part of that person to answer the letter. See *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 457. Once the letter was answered, the contractual relationship was then established.

12. On page [4], second paragraph, the Report refers to a letter dated 16 November 1991. (Annex VII to the Report). We shall not go into disputes about the scope and interpretation of said letter because its contents speak for themselves. But we do want to emphasize that the actions performed by the herein appearing party can not be catalogued as "collection of monies," wording that

is used only in the Report. The actions were rather the facilitating and making feasible the delivery of certain funds that belong to certain persons who have been notified, through notices in the press, that the bank has said funds available.

13. The case cited in the Report, of *In re Valentín González*, 115 DPR 68 (1984), is not even remotely similar to the one at bar. In that one, this Honorable Court censured and reprimanded Atty. Valentín González because he was sending letters to different persons to offer his professional services in relation to their right to compensation for on-the-job accidents that they had suffered. In those cases it was necessary to initiate a controversy at the Court or administrative agency level to claim the possible rights of the persons to whom Atty. Valentín González sent said letters. In the instant case no adversary action had to be initiated before any court or administrative agency, because it merely had to do with obtaining that the depository of the funds return the same to their unquestionable owner. There was no occasion to initiate a contest as to the entitlement to the funds.

14. The case cited in the Report, of *Shapero v. Kentucky Bar Association*, 763 S.W. 2nd 126 (1989), was revoked by the Supreme Court of the United States in 486 U.S. 466 (1988). The Supreme Court of the United States stated the controversy in *Shapero* in the same manner that has been established herein, when it states on Page 468:

> This case presents the issue whether a State may, consistent with the First and Fourteenth Amendments, categorically prohibit lawyers from soliciting legal business for pecuniary gain by sending truthful and nondeceptive letters to

> potential clients known to face particular legal problems.

In *Shapero* the letter was addressed to potential clients against whom lawsuits on foreclosure of mortgages had already been filed and the same read, as copied on page 469:

> "It has come to my attention that your home is being foreclosed on. If this is true, you may be about to lose your home. Federal law may allow you to keep your home by ORDERING your creditor (sic) to STOP and give you more time to pay them.
>
> "You may call my office at any time from 8:30 a.m. to 5:00 p.m. for FREE information on how you can keep your home.
>
> "Call NOW, don't wait. It may surprise you what I may be able to do for you. Just call and tell me that you got this letter. Remember it is FREE, there is NO charge for calling."

After copying the provision of Rule 7.3 of Ethics applicable in Kentucky, the Court states, on page 471, that the prohibition therein contained can not prevail and it adds on page 473:

> Our lawyer advertising cases have never distinguished among the various modes of written advertising to the general public. See, e.g., *Bates, supra* (newspaper advertising); id., at 372, n 26, 53 L Ed 2d 810, 97 S Ct 2691, 51 Ohio Misc 1, 5 Ohio Ops 3d 60 (equating advertising in telephone directory with newspaper advertising); *In re R.M.J., supra,* (mailed announcement cards treated same as newspaper and telephone directory advertisements). Thus, Ohio could no more

> prevent Zauderer from mass-mailing to a general population his offer to represent women injured by the Dalkon Shield than it could prohibit his publication of the advertisement in local newspapers. Similarly, if petitioner's letter is neither false nor deceptive, Kentucky could not constitutionally prohibit him from sending at large an identical letter opening with the query, "Is your home being foreclosed on?," rather than his observation to the targeted individuals that "It has come to my attention that your home is being foreclosed on." The drafters of Rule 7.3 apparently appreciated as much, for the Rule exempts from the ban "letters addressed or advertising circulars distributed generally to persons . . . who are so situated that they might in general find such services useful.

The fact that the instant case involves a communication to specific persons, as opposed to a newspaper advertisement addressed to the public in general, does not alter the basic conclusion that the conduct at issue enjoys the constitutional protection of freedom of speech. To those effects, it is stated at page 473:

> The court below disapproved petitioner's proposed letter solely because it targeted only persons who were "known to need (the) legal services" offered in his letter, 726 SW 2d, at 301, rather than the broader group of persons "so situated that they might in general find such services useful." Generally, unless the advertiser is inept, the latter group would include members of the former. The only reason to disseminate an advertisement of particular legal services among those persons who are "so situated that they might in general find such services useful" is to reach individuals who

> actually "need legal services of the kind provided (and advertised) by the lawyer." But the First Amendment does not permit a ban on certain speech merely because it is more efficient; the State may not constitutionally ban a particular letter on the theory that to mail it only to those to whom it would most interest is somehow inherently objectionable.

In the case at bar it is not stated that the contents of the letter sent by the herein appearing party were false or deceitful. Instead, the contents of said letter are correct and the information therein offered is truthful. Thus, we do not have present in the instant case the evils of the personal intervention of the lawyer that the Court censured in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), that this Court cites in *In re Ibarra-Ortega*, 112 DPR 434 (1982) annotation, nor is here involved the practice of cheapness that is mentioned in the dissenting vote of *In re Rivera-Valdivieso*, 98 DPR 168 (1969).

Certainly, should an interpretation of Rule 34 in the manner presented in the Solicitor General's Report be sustained, it would be fostering the censure that is always repugnant to freedom of speech. See *Aponte-Martínez v. Lugo*, 100 DPR 282, 290 (1971).

*In re Primus*, 436 U.S. 412, also involved a letter to prospective clients in relation to possible civil rights violations. When ruling that the forwarding of the letter by mail is protected by freedom of speech, the Supreme Court of the United States expresses at page 432:

> Appellee contends that the disciplinary action taken in this case is part of a regulatory program aimed at the prevention of undue influence,

overreaching, misrepresentation, invasion of privacy, conflict of interest, lay interference, and other evils that are thought to inhere generally in solicitation by lawyers of prospective clients, and to be present on the record before us. Brief for Appellee 37-49. We do not dispute the importance of these interests. This Court's decision in *Button* makes clear, however, that "[b]road prophylactic rules in the area of free expression *are suspect*," and that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." 371 US, at 438, 9 L Ed 2d 405, 83 S Ct 328; see *Mine Workers v. Illinois Bar Assn.*, 389 US, at 222-223, 19 L Ed 2d 426, 88 S Ct 353, 42 Ohio Ops 2d 394. Because of the danger of censorship through selective enforcement of broad prohibitions, and "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in [this] area only with narrow specificity." *Button, supra*, at 433, 9 L Ed 2d 402, 83 S Ct 328.

15. The Solicitor General's Report indicates that "in the leaflet sent to the depositors information about the feasibility of processing their claim personally and without the need to retain the services of an attorney" was not included. "This is indicative of the possible intention of the respondents of inducing the depositors to believe that said action could only be achieved through a legal representative. This unethical conduct attempts against Rule 35 of Professional Ethics, which provides that all attorneys must exercise a sincere and honest conduct in the performance of their legal profession." Of course, the comment about "unethical conduct" is nothing more than the very personal conclusion of the Solicitor General.

It is necessary to review Rule 35, since we very respectfully understand that what is expressed in the Solicitor General's Report does not fit the reality of this case. On the contrary, the herein appearing party was extremely sincere and honest with the clients when he indicated to them that there were certain funds that belonged to them, the amount of those particular funds and that if they were interested in recovering them, the herein appearing party could carry out for them certain actions to those effects and they were told what would be the fee to be charged for that service. It is worthwhile to point out that there has been no claimant that, once the money was obtained, has indicated in any manner whatsoever that what was agreed upon was not strictly complied with. Nothing of what was pointed out in the claim letter was inconsistent with the truth and, assuming that the claimant was the "trier" to which Rule 35 refers, no false or incorrect narrative of facts was presented to him/her.

16. The herein appearing attorney has a clean record. He has worked in several Commissions of the Bar Association such as: the Consumer Affairs Commission, Commission on Nuclear Arms Problems, Commission on Legislative Affairs and with great pride and dedication in the Ethics Commission. He belongs to the Criminal Justice Act Panel of the United States District Court for the District of Puerto Rico, wherein he represents indigent defendants in criminal cases before said Federal Forum, and he also belongs to the *Pro-Bono* Program of the Puerto Rico Bar Association. This attorney also participates *ad honorem* in numerous law-related community affairs such as in the Dialog and Legal Counselling Program over

radio station 11-Q (1140 AM), guest speaker/lecturer in the federal bar examination review program of the *Federal Bar Association*, and has been associate professor of law at the Interamerican University of Puerto Rico, as well as in the Master's of Criminal Justice Program of the same University.

17. In conclusion, then, the Solicitor General's Report does not present facts that may lead to disciplinary proceedings against the herein appearing party, neither under the Rules of Professional Ethics nor under the inherent power of this Court.

WHEREFORE, on the merits of the foregoing, it is very respectfully prayed of this Honorable Court that it ORDER the dismissal of the subject matter of the Solicitor General's Report.

I CERTIFY: That I have forwarded a copy of this Reply to Ms. Ivonne Casanova-Pelosi, Esq., Assistant Solicitor General, Department of Justice, P.O. Box 192, Old San Juan, P.R. 00902.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on the 1st of May 1992.

/Sgd/ (Unreadable)
ELI B. ARROYO
Counsel for the Herein
Appearing Party
P.O. Box 366829
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**– CERTIFIED –**

To be a correct translation prepared by:
/s/ Ernesto Quidgley – 4-2-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

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## APPENDIX K

CERTIFIED TRANSLATION:

IN THE SUPREME COURT OF PUERTO RICO

IN RE:

ATTY. JUAN M. MASINI-SOLER

AB-92-24

**SOLICITOR GENERAL'S REPORT**

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IN SAN JUAN, PUERTO RICO
ON 18 JUNE 1992

IN THE SUPREME COURT OF PUERTO RICO

IN RE:

ATTY. JUAN M. MASINI-SOLER

AB-92-24

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IN THE SUPREME COURT OF PUERTO RICO

IN RE:

ATTY. JUAN M. MASINI-SOLER

AB-92-24

**SOLICITOR GENERAL'S REPORT**

TO THE HONORABLE COURT:

Comes now the Solicitor General and very respectfully states and prays:

In compliance with the Resolution issued by this Illustrious Forum, dated 22 May 1992, we submit our arguments in reaction to the Reply of Atty. Juan M. Masini-Soler in the matter at caption.

Because of the repercussions that any ruling that this Illustrious Forum may issue in this controversy might have, we deem it prudent and necessary to discuss the latest juridical trends in the field of regulating publicity advertisements and solicitations on the part of lawyers, both in the United States and in Puerto Rico.

While it is true that for years the states have rigorously regulated advertisements and offerings of professional legal services requested, it is not less true that the courts have had to make flexible the application of said regulations in order to reconcile them with the currently existing need for citizens to have access to information about legal services and the right guaranteed by the First Amendment of the United States on freedom of speech for lawyers. This flexibilizing of criteria has not been limited exclusively to publicity advertisements but it has also been extended to the offering of unsolicited legal services to clients with specific legal problems.

In the case of *Bates* v. *State Bar*, 433 U.S. 350 (1977) the Supreme Court of the United States for the first time faced the problem of advertisements for professional legal services *vis-à-vis* the First Amendment. In said case the controversy consisted of the publication of an advertisement which pointed out the services offered by a law firm and the fees that the same charged for each of the services offered. In this case the Supreme Court extended the constitutional guarantee of the First Amendment to a truthful advertisement the purpose of which was to orient potential clients about the availability of routine legal services and the conditions that said potential clients had to meet to be able to receive said services. In this particular case, however, the Court established a difference between advertisements and offerings of unsolicited legal services in person. The controversy on the offering of unsolicited professional legal services was discussed by the Supreme Court of the United States in the case of *Ohralik* v. *Ohio State Bar Association*, 436 U.S. 447 (1978). In this case the Court sustained the determination of a state

Court of disciplining an attorney who had personally offered his services without the same having been requested and for the purpose of gain under circumstances that propitiated fraud, undue influence, intimidation, invasion of privacy or any other kind of bothersome or annoying conduct.

Ronald L. Blunt, in the *Missouri Law Review*, Volume 45 (1980), makes a brief analysis of the state jurisprudence subsequent to *Bates* whereby an attempt was made to establish a difference between what constituted an advertisement and an offer of unsolicited legal services. Among other things, he pointed out the following:

> "In *Koffler*, [*In Re Koffler*, 420 N.Y.S. 2d 560 (1979)] the New York Appellate Court, after a comprehensive analysis of the aforementioned cases, determined that the letters written by attorneys Harrison and Koffler were 'clear examples of commercial speech, motivated by pecuniary interest and serving no purpose other than ultimately to secure a business transaction.' It further concluded that the letters were not a form of advertising, but instead constituted solicitation. The Court's rationale was that the letters, addressed to a captive audience, created a situation vulnerable to the same sort of vexatious conduct as that described in *Ohralik*. [436 U.S. 477 (1978)] The Court said that a letter 'goes far beyond the allowable type of restrained advertising aimed at giving public notice of the availability of legal services which was approved of in *Bates*.' [433 U.S. 350 (1977)].
>
> Having characterized the letters as solicitation, the Court concluded that such mailing could be proscribed. The influence of *Ohralik* on

the Court's holding is profound. The Court stated that *Ohralik* should not be limited to in-person solicitation, but it should be read to apply to other forms of solicitation as well.

Most of the post-*Bates* litigation has involved in-person solicitation. Courts almost uniformly have agreed that such behavior can be proscribed by court rule or statute. There does appear, however, to be considerable disagreement whether all types of solicitation can be subject to a *per se* prohibition.

The advertising-solicitation line likewise has proven difficult to draw. In *Kentucky Bar Association* v. *Stuart*, [568 S.W. 2d 933 (1978)] the Kentucky Supreme Court reached a different characterization on facts almost identical to those in *Koffler*. Attorneys Stuart and Thompson mailed letters on law office stationery to two real estate agencies. The letters quoted fees for opinions of title, deed preparation, and mortgage preparation. The Court said it was "not persuaded that the letters in this case constitute[d] 'in-person solicitation any more than any other form of advertising . . . The letters contain no words generally associated with solicitation . . . None of the evils are present here which exist in the case of in-person solicitation.' " The Court rejected claims that the letter was more subject to overreaching and deception than was the newspaper advertisement approved in *Bates*, noting that all forms of advertising are subject to such evils. The Court also rejected the claim that ethical standards of advertising would be too dificult to enforce with letters.

The comparison of *Koffler* and *Stuart* exposes the confusion that surrounds efforts to

draw an advertising-solicitation distinction. It is the preferred interpretation that this distinction is not warranted. The language of *Ohralik* does not necessarily give rise to such a division of categories. Instead, this language should be read as expressing the principle that, while commercial speech is worthy of first amendment protection, it is to receive less protection than other variations of speech. The facts of *Ohralik* seem to have led the courts to construe these comments as unique to *Ohralik* and its factual situation of solicitation, and yet the same theme runs vividly through *Virginia Pharmacy* and *Bates*, neither of which involved solicitation.

The question, then, is what best is to be used by the courts in determining the constitutional permissibility of restrictions upon commercial speech by attorneys. When not faced with solicitation, most courts recognize the need to employ some sort of balancing test. As with other First Amendment issues, it seems apparent that no *per se* rule should be adopted in the area of attorneys' advertising, regardless of the advertising-solicitation characterization. The courts instead should begin with a general rule that the First Amendment protects all communications, regardless of whether they involve advertising or solicitation. This approach would emphasize the principle that restraint on freedom of speech is the exception, not the rule. Additionally, this approach properly would shift the burden for justification of the restriction to the state.

In the year 1985 in the case of *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), an attempt was made to discipline an attorney who had published an

advertisement wherein he oriented women who had suffered damages as a consequence of an intrauterine device of the Dalton Shield brand. In relation to the advertisement itself, the Supreme Court deemed that the disciplinary measures were not proper. Nevertheless, in this same case the Court deemed it proper to discipline him for publicity information that induced to error:

> "The Court upheld the state's power to discipline the attorney on two other grounds, however, with respect to advertising statements that were in fact misleading. In a different ad for clients charged with drunk driving, the same lawyer had said that legal fees would be returned in full if the client were 'convicted of drunk driving.' What the ad failed to say was that most drunk driving defendants plead guilty to a lesser offense than drunk driving, in which event the fee would not be refundable. Also, the lawyer's Dalton Shield ad said that the client would not be responsible for any fees unless she recovered a judgment in the case. This was misleading to those members of the public who would not realize that the client would be responsible for costs (which could be substantial). Accordingly, the Court upheld a rule requiring the inclusion of clarifying information in such advertisements." [*Understanding Lawyers' Ethics*, Monroe H. Freedman, 1990, p. 248].

As we can observe, in this case the Supreme Court begins to sanction advertisements that because of the incompletion of the same induced to error on the part of the potential client to which the same were addressed.

After the *Zauderer* case, the Supreme Court of the United States in the case of *Shapero v. Kentucky Bar Association*, 486 U.S. 466 (1988), declared null certain state provisions that prohibited publicity by way of letters that advertised professional legal services. It was provided in that case that because it had not been proven that the contents of the letter were deceitful or that they induced to error, it was not proper to discipline the lawyer involved for unethical conduct.

In Puerto Rico, subsequent to *Bates v. State Bar Associates*, this Illustrious Forum provided that it was proper to sanction the attorney for having published an advertisement with a high potential to induce to error, to misinterpretation or to confusion. [See *In Re: González*, 112 D.P.R. 430 (1982)].

In *In Re: Valentín González*, 115 D.P.R. 68 (1984), this Honorable Court ruled that the mailing to specific potential clients of a communication wherein the lawyer offered his legal services in relation to the rights of certain clients to be compensated for job-related accidents constituted a violation of Rules 34 and 36 of Professional Ethics. In said case, this Court did not enter into deciding whether such kind of solicitation was false, induced to error or confusion, as it had previously done in *In Re: González*. This decision reflected the trend that already existed in the state courts of the United States and that we have already discussed, whereby the intent was to be more rigorous with the lawyers when the published or mailed advertisement was of the "targeted mailing" type. As we have already mentioned, in *Shapero* the Supreme Court of the United States made the constitutional protection of the First Amendment extensive to this kind of

direct solicitation *as long as and provided that the same were not false nor would it induce to error.* In said case the following was provided in relation to direct solicitation by a lawyer to potential clients:

> "The First Amendment does not permit a ban on certain speech merely because it is more efficient; the state may not constitutionally ban a particular letter on the theory that to mail it only to those whom it would most interest is somehow inherently objectionable."

## APPLICABILITY OF PREVAILING JURISPRUDENCE TO THE CASE AT CAPTION

When applying the prevailing jurisprudence to the case at caption we see that none of the cases herein mentioned support the lawfulness of attorney Masini's actions. In the instant case, just as we set forth in our report, the communication sent to the complainants is false and induces to error. Hereinbelow we will proceed to discuss the respondent's arguments in the light of Rules 34 and 36 of Professional Ethics and the prevailing jurisprudence.

Rule 34 of Professional Ethics governs the lawyer's conduct as to the instigation or obtaining litigation without his/her having been solicited.

Said Rule, among other things, provides as follows:

> "A lawyer who for the purpose of gain or profit and *without being solicited to offer his/her legal counsel or advise, urges or stimulates potential clients in any manner whatsoever to initiate judicial or other kinds of claims* is acting contrary to the high

precepts of the profession. *Also contrary to the sound practice of the profession is that an attorney, without having been required to do so, whether done personally or through other persons, investigates or researches defects in titles or other possible sources or causes of claims for the purpose of somehow obtaining a gain, profit or benefit through the rendering of his/her professional services."* [Emphasis ours.]

Our attention is drawn to attorney Masini's position in his allegation number 10 wherein he points out that his action did not constitute a legal offering addressed to the initiation of a claim nor does it constitute a search for possible causes of claims for his financial gain. We ask ourselves: How would then the respondent classify his action of mailing to several depositors, without having been required to do so, information about their deposits? He adds that the information offered was sincere and honest. Then, how do we explain the lack in said leaflet that in order to achieve the withdrawal of said funds the depositor has the option to do so in person? How does attorney Masini explain that from the contract that he mails to the depositors it does not arise that he would charge 20% of the funds deposited if his action is fruitless?

Attorney Masini's contention that it is to the bank to whom it pertains to offer orientation as to it not being necessary to retain a lawyer in order to claim the funds is untenable. We have no doubt whatsoever that should said information be included most of the persons contacted would not retain his services. It becomes evident that the purpose of said omission is to give the impression that

were it not through a legal representation the client would not be able to recover his/her monies.

The best example that we have to support our position that because of the incompleteness of the information furnished by the attorney the same results deceitful is constituted by the two additional complaints that we received against the lawyer at caption subsequent to the filing of our Report.

In the particular case of Mr. Carmelo Martínez-Figueroa [see Appendix I] it arises that attorney Masini's communication caused great confusion to him, since, because of the incompleteness of the same, Mr. Martínez received the impression that it had to do with other funds that the latter had deposited with a different institution. In this particular case, the complainant is blind, nor can he read and write. We consider that the non-personal treatment that exists in this kind of contracting is one of the reasons for which the situation becomes completely lacking of the orientation and communication that should exist in an attorney-client relationship.

It must be noted that although in this case the bank refused to deliver the funds to attorney Masini, the latter insisted in the collection of 20% of the amount to be claimed because of the action that he undertook with said institution. [See Appendixes II and III].

This collection of 20% for the attorney's fruitless efforts is not recorded in the contract to be notarized that said lawyer sends to his clients. On the contrary, we understand that the attorney deceives the client when he points out to him/her the following in one of the clauses thereof:

> "For value received and for services rendered, the undersigned does hereby convey, assign and transfer to ATTY. JUAN M. MASINI-SOLER, his agents, legal representatives, counsellors [sic], and successors and assigns a fee of thirty-three and one third per cent (33.33%) as fee for the search, legal expenses, attorney's fees, ordinary and extraordinary expenses, which will be paid to ATTY. JUAN M. MASINI-SOLER only upon ATTY. JUAN M. MASINI-SOLER as attorney-in-fact having satisfactorily received the funds on behalf of the undersigned. That prior to the successful collection of said funds, no expense or cost whatsoever will be paid in advance by the undersigned."

Once again we see how the incomplete information forwarded by the respondent makes the contracting between the parties a deceitful one.

Atty. Marisol Flores-Cortés referred to us another incident related to this situation of facts. In this case, the funds to be claimed were those deposited at the Office of the Clerk of our Trial Courts. [See Appendixes IV, V and VI]. In this particular case there was no contracting between the complainant and the respondent.

In summary, we see how the information forwarded to the potential client not only constitutes a solicitation that on its day this Honorable Court will determine whether it enjoys constitutional protection or not, but that also, if made under oath, the same becomes what would have been a contract between the parties. We are concerned about this type of contract between the lawyer and his client. It is our opinion that the attorney-client relationship must be grounded on something further than

the mere signature of an affidavit. To sustain otherwise or to legitimize this action just as it arises from the case before us would be equivalent to reducing the function of the respondent lawyer to one equivalent to an agency for the collection of monies.

We consider that there exist valid reasons that must be sounded out by this Illustrious Forum in the process of balancing the state's interest in regulating advertisements between the licensed profession and the constitutional protection afforded to the citizens by the First Amendment. Hereinbelow we cite some of the reasons for regulating this type of activity:

> "Opposition to direct mail solicitation tends to be both emotional and practical. Persons charged with drunk driving may be highly offended to learn their arrest has been discovered by others, even by lawyers offering to help. Families of mass disaster victims, the lay public, and many in the legal profession are often repulsed when lawyers swarm around the injured like buzzards. This invasion of privacy and offense to sensibilities is somewhat lessened when the offer of assistance comes by mail, rather than in person or by telegram. Further, a business entity might welcome hearing of a new, aggressive firm offering precisely the type of services it needs. Nevertheless, traditional lawyer aversion to oversolicitation evokes a visceral cry for an absolute ban rather than narrowly drafted distinctions between offensive and inoffensive solicitation.
>
> Practically, there may be real enforcement problems. Disciplinary agencies are notoriously understaffed and overworked. Limited staff

> time would be better spent policing more serious problems rather than screening all letters that lawyers propose sending to prospective clients or even reviewing them after the fact. Further, agency staff may not know enough underlying facts to determine whether a letter is deceptive or misleading." [See 13 Hastings Constitutional Law Quarterly, 487 Spring 1986].

When evaluating the previously cited arguments, we can not divorce ourselves of the Puerto Rican reality. Currently in Puerto Rico there are more than 8,348 lawyers. If we take under consideration the number of inhabitants that we have and the small territorial extension of the Island, we can no less than to conclude that we are saturated with legal offerings. We are worried about the impact that might be achieved over the image of the legal profession the flexibility with which this Honorable Court may in the future provide as to controversies involving advertisements or solicitations on the part of our licensed profession. An unrestrained competition between law offices and attorneys to recruit clients could result in chaos and in continuous harassment of particular citizens for the detriment of the professionalism with which our licensed profession must perform.

As to the merits of the particular case that we have before us, we understand that because of the deceitfulness of the communication sent by the respondent there exists no bar whatsoever for this Illustrious Forum to proceed to sanction him for his conduct.

**WHEREFORE**, we respectfully pray of this Honorable Court that it take notice of what has been informed

herein and that after the official requirements it proceed to provide as may be proper at law.

**Respectfully submitted.**

In San Juan, Puerto Rico, on 18 June 1992.

**ANABELLE RODRIGUEZ**
Solicitor General
Bar Member No. 9572

/Sgd/ (Unreadable)
**REINA COLON DE RODRIGUEZ**
Deputy Solicitor General
Bar Member No. 4894

/Sgd/ Yvonne Casanova Pelosi
**YVONNE CASANOVA-PELOSI**
Assistant Solicitor General

## NOTICING

**I CERTIFY:** That via Certified Mail, Return Receipt Requested, I have forwarded a copy of the foregoing Solicitor General's Report to:

**MR. JUAN M. MASINI-SOLER, ESQ.**
P.O. BOX 3367
OLD SAN JUAN, PUERTO RICO 00904
TEL. 751-0447

In San Juan, Puerto Rico, on 18 June 1992.

/Sgd/ Yvonne Casanova Pelosi
**YVONNE CASANOVA-PELOSI**
Assistant Solicitor General
Bar Member No. 9937

Department of Justice
P.O. Box 192
San Juan, Puerto Rico 00902
Telephone: 721-2900 Ext. 285

YCP/ode

CASANOVA/FRANCO

---

**- CERTIFIED -**
To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-14-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

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## APPENDIX I

CERTIFIED TRANSLATION:

Isabela, Puerto Rico
27 April 1992

District Collection Agency
410 San Vicente Condominium
Ponce, Puerto Rico 00731

Attention: Rosa E. Cabrero

Re: NO. 29455 JMMS 050

Dear Gentlemen:

I have received a collection notice for an alleged debt to Atty. Juan M. Masini-Soler in the amount of $346.64, debt which I understand I do not owe, for which I will appreciate that the notices be discontinued.

There does not exist nor did there ever exist a contract with Atty. Masini-Soler since the document that I sent to him, "Claim for Funds Under Notarial Oath," suggested

and it was meant to be understood that it was funds other than those that I knew I had and still have since 31 December 1985 with Banco Popular de Puerto Rico, Isabela Branch. At no time was there any reference made that it had to do with said funds.

I understand that there was no effort made by Atty. Masini-Soler to locate any account nor funds different from these.

Likewise, Banco Popular notified Atty. Masini-Soler that the document alluded to had no legal validity whatsoever, as it arises from a communication forwarded by the same and dated as of 31 October 1991.

I am enclosing for you a copy of the certification issued by Banco Popular, Isabela Branch, which is self-explanatory.

I am forwarding a copy of this communication and the corresponding documents to the Puerto Rico Bar Association and to the Hon. Solicitor General of the Department of Justice for the pertinent effects.

Having no further particulars, I remain,

Cordially,

Witness: /Sgd/ (Unreadable)

Carmelo Martínez-Figueroa
Rd. 474, Box 289
Galateo Bajo Wd.
Isabela, Puerto Rico 00662

Enclosures
P.S. I am an elderly person, blind, who can not read nor write and depend totally on the charity of my neighbors.

**RECEIVED**
MAY 02 1992
BAR ASSOCIATION

---

**– CERTIFIED –**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-14-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

APPENDIX II

CERTIFIED TRANSLATION:

**Juan M. Masini-Soler**
**Attorney-At-Law &**
**Notary Public**

**TEL. 753-3692**
**P.O. Box 3367**
**Old San Juan, Puerto Rico**
**00904**

Mr. Carmelo Martínez-Figueroa
Box 474 No. 241
Galateo Bajo Wd.
ISABELA, P.R. 00662

Re: Amount $1,050.41
Banco Popular de P.R.
ISABELA Branch #83
Ramón I Angueira,
Assistant
V.P.-Manager

Dear client:

You recently authorized us, through Claim for Funds Under Notarial Oath, to locate and withdraw in your name and on your behalf the amount indicated above. To

those effects we undertook the pertinent actions with the depository of the same, Banco Popular de Puerto Rico, who has refused to reimburse the same alleging that the document signed by you is not acceptable to their Legal Division. We disagree with the Bank in this regard and we understand that they have assumed an arbitrary attitude and both to the detriment of your interests as well as ours.

Our agreement was to the effects that we would locate and forward your money to you, less our professional fees. Nevertheless, in attention to our professional responsibility, we inform you that the amount to which you are entitled is the one shown above and that you can claim it directly at the Branch at caption. At not being able to comply with part of that agreement for the aforesaid reasons beyond our control, we believe it is fair to reduce the same from 33$^{1}/_{3}$% to 20%.

We would appreciate that when you withdraw the unclaimed amount you remit to us 20% of the net amount received by you to the following address: 461 Ponce de León Ave., John Morris Bldg., Suite 200, Hato Rey, P.R. 00918. We remind you that without our intervention you would not have learned that those unclaimed funds belonged to you. That is the importance of our careful and tedious investigative work.

We suggest that you withdraw those funds prior to 9 December 1991, the date when they go under the custody

of the Department of the Treasury. If you have any doubt or question, I ask you to call me at 753-3692.

Sincerely,

/Sgd/ J. Masini
Juan M. Masini-Soler, Esq.
10/31/91

cc: Banco Popular de Puerto Rico
Legal Division/Atty. Morales

---

**- CERTIFIED -**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-14-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

APPENDIX III

CERTIFIED TRANSLATION:

Tel. _____
Soc. Sec. # _____
New Address _____

Mr. Carmelo Martínez-Figueroa
Box 474 No. 241
Galateo Bajo Wd.
Isabela, Puerto Rico 00662

File No. PR 1 91-39-1

LEGAL NOTICE

Our Department of Recovery of Assets has detected certain funds that belong to you.

If you are interested in recovering them, sign before a Notary the PETITION FOR CLAIM UNDER NOTARIAL OATH and forward it as soon as possible to file a claim on your behalf. Make a copy for yourself before you send in the original.

Sincerely,

ATTY. JUAN M. MASINI-SOLER

JUAN M. MASINI-SOLER, ESQ.
461 Ponce de León Avenue, Suite 200
Hato Rey, Puerto Rico 00917

Tel. 753-3692

**CLAIM FOR FUNDS UNDER NOTARIAL OATH**

CITY
COMMONWEALTH OF PUERTO RICO

I, Carmelo Martínez-Figueroa, as owner of funds in the amount of $1,050.41 approximately, arising from abandoned property, unclaimed property, assets of a dissolved or existing Corporation, unclaimed dividends or corporate distribution, proceeds of a life insurance policy, or funds arising from an inheritance or other escheated property, under notarial oath state and say the following:

That I am of legal age and that I have the legal standing to sign this document and that I reside in the aforesaid City of the Commonwealth of Puerto Rico.

That the Department of Recovery of Assets of the Law Office of ATTY. JUAN M. MASINI-SOLER has done the work of investigating, tracing and establishing that the undersigned may be entitled to the funds indicated in the FIRST paragraph and that the undersigned wishes to recover said funds.

The undersigned does hereby appoint ATTY. JUAN M. MASINI-SOLER, his Representatives, Counsellors and Attorneys as his/her attorneys-in-fact to act in his/her name, place and stead in relation to all matters that the undersigned could do in regards to the claim for, transfer or distribution of the monies, credits or assets due to

him/her. The undersigned grants to said attorney-in-fact full power and authority to receive the monies in the name and on behalf of the undersigned and to give a receipt and discharge for the same in his/her name and on his/her behalf. No person who pays the claim for monies or funds in favor of the undersigned will be required to verify the ultimate disposition of the same.

This Petition as Attorney Under Oath is in no way intended to limit the faculties of the appointee but to indicate that he has full authority to do all and any of the necesary [sic] actions that the undersigned might conduct as to the matter consigned in the FIRST paragraph.

For value received and for services rendered, the undersigned does hereby convey, assign and transfer to ATTY. JUAN M. MASINI-SOLER, his agents, legal representatives, counsellors, and successors and assigns a fee of thirty-three and one third per cent (33.33%) as fee for the search, legal expenses, attorney's fees, ordinary and extraordinary expenses, which will be paid to ATTY. JUAN M. MASINI-SOLER only upon ATTY. JUAN M. MASINI-SOLER as attorney-in-fact having satisfactorily received the funds on behalf of the undersigned. That prior to the successful collection of said funds, no expense or cost whatsoever will be paid in advance by the undersigned.

The undersigned binds himself/herself at all times to indemnify ATTY. JUAN M. MASINI-SOLER, his agents, their respective legal representatives, successors and assigns, and any city, county, state government and federal government, their officers and employees (hereinafter the "Obligee(s)") and hold them harmless from all

claims, actions and lawsuits, whether groundless or otherwise, and from and against all liabilities, losses, damages, judgments, costs and expenses, attorneys' fees and other expenses of every nature or character by reason of honoring or refusing to honor the original evidence of ownership when presented by or on behalf of the holder in due course of time, or a holder who appears to be or the Obligees believe is such, or the making of any payment, delivery or credit in respect to the original evidence of ownership without surrender thereof, whether or not caused by, or based upon, or arising out of inadvertence, accident, oversight, neglect or omission or failure to inquire into, contesting or litigate the right of any applicant to receive any payment, credit, transfer, registration, exchange or delivery in relation to the original evidence of ownership, or caused by, based upon or arising out of any other matter or thing whatsoever.

This PETITION FOR CLAIM OF FUNDS UNDER NOTARIAL OATH to request the recovery of funds is specifically limited to the funds identified in the FIRST paragraph, which have not been claimed by the undersigned for a period of not less than five (5) years. These funds do not include any tax refunds, benefits, payments,

credits, dividends or monies that have not been claimed by the undersigned for a period of five (5) years.

Date 13 Sept. 1991

/Sgd/ (Unreadable) Feliciano Rodz.
Witness to the Mark

His mark and fingerprints

Carmelo Martínez
Figueroa Signature

Affidavit # 23,014

Sworn to and subscribed before me by Mr. Carmelo Martínez-Figueroa, whom I personally know, in Isabela, Puerto Rico, on this 13th day of September 1991.

/Sgd/ Marcos Feliciano Crespo
MARCOS FELICIANO-CRESPO
NOTARY PUBLIC

(There appears the Round Notarial Stamp of MARCOS FELCIANO-CRESPO, ATTORNEY-AT-LAW AND NOTARY PUBLIC, ISLAND OF PUERTO RICO.)

---

**- CERTIFIED -**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-14-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, Puerto Rico 00921
(809) 751-8334

APPENDIX IV

CERTIFIED TRANSLATION:

(Logo) PUERTO RICO BAR ASSOCIATION
P.O. BOX 1900, SAN JAN, PUERTO RICO 00904

Telephones:
721-3358
723-6984

Ethics Commission

Hon. Jorge E. Pérez-Díaz
Solicitor General
Department of Justice
P.O. Box 192
San Juan, Puerto Rico 00903

Dear Mr. Solicitor General:

Atty. Marisol Flores submitted before our consideration her concern about the actions of Atty. Juan Masini-Soler, which is attached hereto.

Atty. Juan Masini-Soler was a member of our Commission until October 1990. Although there has been a change in the Presidency of the Bar Association, the Commission retained most of its members as Commissioners. Wherefore, most of its current Commissioners shared their actions with Atty. Juan Masini-Soler.

We have also considered that until July of the running year the husband of the Investigating Officer acted as Special Independent Prosecutor in said Office, which is directed by Atty. Lydia Lizarríbar, spouse of Atty. Masini-Soler.

In order to avoid the possibility of conflict and as to guarantee the purity of the investigative processes, we are referring said matter to your attention.

We appreciate your cooperation and we reiterate ourselves at your service.

Sincerely,

/Sgd/ Mady Pacheco G.
MADY PACHECO GARCIA DE LA NOCEDA
Investigating Officer

MPG/nr

cc: Atty. Marisol Flores-Cortés

---

**– CERTIFIED –**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-14-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, Puerto Rico 00921
(809) 751-8334

APPENDIX V

CERTIFIED TRANSLATION:

Tel. _____
Soc. Sec. # _____
New Address _____

Dr. Luis Flores-Villar
108 Parques de las Fuentes
HATO REY, P.R. 00918

File No. PR 18 91 22-2

LEGAL NOTICE

Our Department of Recovery of Assets has detected certain funds that belong to you.

If you are interested in recovering them, sign before a Notary the PETITION FOR CLAIM UNDER NOTARIAL OATH and forward it as soon as possible to file a claim on your behalf. Make a copy for yourself before you send in the original.

Sincerely,

ATTY. JUAN M. MASINI-SOLER

---

JUAN M. MASINI-SOLER, ESQ.
461 Ponce de León Avenue, Suite 200
Hato Rey, Puerto Rico 00917

Tel. 753-3692

**CLAIM FOR FUNDS UNDER NOTARIAL OATH**

CITY **SAN JUAN**
COMMONWEALTH OF PUERTO RICO

I, Dr. Luis Flores-Villar, as owner of funds in the amount of $2,500.00 approximately, arising from abandoned property, unclaimed property, assets of a dissolved or existing Corporation, unclaimed dividends or corporate distribution, proceeds of a life insurance policy, or funds arising

from an inheritance or other escheated property, under notarial oath state and say the following:

That I am of legal age and that I have the legal standing to sign this document and that I reside in the aforesaid City of the Commonwealth of Puerto Rico.

That the Department of Recovery of Assets of the Law Office of ATTY. JUAN M. MASINI-SOLER has done the work of investigating, tracing and establishing that the undersigned may be entitled to the funds indicated in the FIRST paragraph and that the undersigned wishes to recover said funds.

The undersigned does hereby appoint ATTY. JUAN M. MASINI-SOLER, his Representatives, Counsellors and Attorneys as his/her attorneys-in-fact to act in his/her name, place and stead in relation to all matters that the undersigned could do in regards to the claim for, transfer or distribution of the monies, credits or assets due to him/her. The undersigned grants to said attorney-in-fact full power and authority to receive the monies in the name and on behalf of the undersigned and to give a receipt and discharge for the same in his/her name and on his/her behalf. No person who pays the claim for monies or funds in favor of the undersigned will be required to verify the ultimate disposition of the same.

This Petition as Attorney Under Oath is in no way intended to limit the faculties of the appointee but to indicate that he has full authority to do all and any of the necesary actions that the undersigned might conduct as to the matter consigned in the FIRST paragraph.

For value received and for services rendered, the undersigned does hereby convey, assign and transfer to ATTY. JUAN M. MASINI-SOLER, his agents, legal representatives, counsellors, and successors and assigns a fee of thirty-three and one third per cent (33.33%) as fee for the search, legal expenses, attorney's fees, ordinary and extraordinary expenses, which will be paid to ATTY. JUAN M. MASINI-SOLER only upon ATTY. JUAN M. MASINI-SOLER as attorney-in-fact having satisfactorily received the funds on behalf of the undersigned. That prior to the successful collection of said funds, no expense or cost whatsoever will be paid in advance by the undersigned.

The undersigned binds himself/herself at all times to indemnify ATTY. JUAN M. MASINI-SOLER, his agents, their respective legal representatives, successors and assigns, and any city, county, state government and federal government, their officers and employees (hereinafter the "Obligee(s)") and hold them harmless from all claims, actions and lawsuits, whether groundless or otherwise, and from and against all liabilities, losses, damages, judgments, costs and expenses, attorneys' fees and other expenses of every nature or character by reason of honoring or refusing to honor the original evidence of ownership when presented by or on behalf of the holder in due course of time, or a holder who appears to be or the Obligees believe is such, or the making of any payment, delivery or credit in respect to the original evidence of ownership without surrender thereof, whether or not caused by, or based upon, or arising out of inadvertence, accident, oversight, neglect or omission or failure to inquire into, contesting or litigate the right of any

applicant to receive any payment, credit, transfer, registration, exchange or delivery in relation to the original evidence of ownership, or caused by, based upon or arising out of any other matter or thing whatsoever.

This PETITION FOR CLAIM OF FUNDS UNDER NOTARIAL OATH to request the recovery of funds is specifically limited to the funds identified in the FIRST paragraph, which have not been claimed by the undersigned for a period of not less than five (5) years. These funds do not include any tax refunds, benefits, payments, credits, dividends or monies that have not been claimed by the undersigned for a period of five (5) years.

Date _____

_____

Signature

Affidavit #

Sworn to and subscribed before me by _____,

SEAL

_____

NOTARY PUBLIC

[APPENDIX VI not translated by direction of Mr. Juan Masini-Soler.]

**– CERTIFIED –**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-14-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

**APPENDIX L**

CERTIFIED TRANSLATION:

IN THE SUPREME COURT OF PUERTO RICO

| | | |
|---|---|---|
| RE: | ) | |
| ATTYS. | ) | |
| JOSE R. FRANCO-RIVERA | ) | NO. AB-92-24 |
| AND | ) | |
| JUAN M. MASINI-SOLER | ) | |
| | ) | |

REJOINDER TO SOLICITOR GENERAL'S (SECOND) REPORT

TO THE HONORABLE COURT:

Comes now Atty. Juan M. Masini-Soler through his undersigned attorneys and very respectfully STATES, ALLEGES and PRAYS:

1. On 4 May 1992 the herein appearing party filed his Reply to the Solicitor General's Report. On 18 June 1992 the Solicitor General appeared through a "Solicitor General's Report" (the Second Report) submitting arguments in reaction to our Reply of 4 May 1992. Dated as of 21 August 1992 this High Forum granted our request to submit our Rejoinder to said Second Report and to show cause why we should not be disciplined. In compliance with said Resolution, we appear in the case files.

2. The Solicitor General's Second Report, in consonance with the ample jurisprudence that is cited herein, and in particular the cases of *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 625 (1985) and *Shapero v. Kentucky Bar Association*, 486 U.S. 466 (1988), that disciplinary

measures are not proper against a lawyer for the publication of advertisements, or for direct solicitation or offering unsolicited legal services, provided always that the contents of the same is not deceptive nor inducive to error. It is evident to observe that, according to the Solicitor General, the controversy in the instant case is not whether the herein appearing party could or could not legally incur in said practice but whether [the Solicitor General's] very personal conclusion that the contents of the communicaton was deceptive or induced to error. We respectfully disagree with said groundless personal conclusion.

3. On page 6 [of the Spanish language version] of her Second Report [pages 8 and 9 of the English translation], the Solicitor General asks three rhetorical questions in relation to the allegation (paragraph 10 of the Reply) that that the action of the herein appearing party did not constitute a legal offering addressed to the initiation of a claim nor does it constitute a search for possible causes of claims for his financial gain. This argument was brought forth in attention to the Solicitor General's original position in respect to the charge that was made in relation to Rule 34 of Professional Ethics. We understand that in the light of the cases of *Zauderer* and *Shapero* the argument brought forth is not extensive to the controversy at bar. Nevertheless, in order to make perfectly clear in the spirit of this Honorable Court what was the action performed, we will answer said questions.

4. The Solicitor General asks how would the respondent's action of mailing to several depositors, without having been required to do so, the information about their deposits. The answer is that we classify it as a direct

solicitation that enjoys the constitutional protection of the First Amendment as expressed in *Shapero*. While in said direct solicitation there is no explanation that the depositor had the option of making the withdrawal of funds personally, the reality is that there exists no obligation whatsoever to do so. Neither was the depositor induced to error by making him/her believe, as is suggested, that the withdrawal could only be done through a lawyer. The communication was limited to offering certain services to accomplish the withdrawal of the funds. There was no misrepresentation nor one that induced to error. We emphasize that there existed no contractual obligation on the part of the persons to whom the notice was sent and that, on the contrary, the latter had the most perfect right to disregard the same, as indeed was done by several persons to whom the communication was sent.

5. Although it is sustained that the efforts made by the herein appearing party was always done to the best of his good faith and without the intent to cause any controversy, the same can not be said of the persons who resorted to claim the monies. The Solicitor General rhetorically asks herself why were the persons not informed that they could withdraw the money personally. In addition to what was indicated in the preceeding paragraph, it is necessary to point out that the times when the herein appearing party did so, in consideration of the depositor, his fees were not paid. By way of example, included herewith is a copy of the Claim for Funds Under Notarial Oath addressed to Sister Tomasina Rufino-Bueno, of the Order of Our Lady of Mercy and Charity, dated 23 August 1991, Exhibit 1, a. Sister Tomasina requested from the petitioner that she be allowed to claim the money

directly because of the urgency that she had for the same and she expressed her gratitude for having been alerted to these funds that the Convent did not know or did not remember that it had. She indicated that she would take action personally, promising to pay the agreed-upon fees once she had recovered the money. However, it did not happen that way. On 27 August 1991 the herein appearing party forwarded a letter to Sister Tomasina, Exhibit 1, b, to which there was no reply. The same occurred with a letter of 21 November 1991, Exhibit 1, c. Since this latest date no further action has been taken nor will be taken by the herein appearing party. If this was done by a member of a religious Order, how does the Solicitor General think that other persons would act if, prior to entering into a contractual relationship with the herein appearing party they were to be informed as to how, when and where they can submit their claim for money?

6. The third rhetorical question of the Solicitor General's deserves a more detailed answer. She questions how can the herein appearing party explain that from the contract that he forwarded to the depositors it did not arise that a charge of 20% of the funds deposited would be made should the action be fruitless. In the first place, we strongly disagree with the Solicitor General that 20% of the funds deposited would be charged if the action was fruitless. The reality is that when that happened, no charge was made. From the agreement subscribed between the depositor and the herein appearing party it arose that the former would assign to the latter $33^1/_3$% for the search for and recovery of the funds, which would be paid only upon sucessful recovery. Nevertheless, faced with the refusal of the two largest banks of Puerto Rico,

Banco Popular and Banco Santander (the rest of the banks honored the claim) to honor said claim (at the beginning Banco Popular honored it but later on refused to do so), the herein appearing party understood that he had a responsibility towards those persons who had asked him to make the claim, so that they would not believe that he had submitted the same without forwarding to them their corresponding part. To those effects he made the decision to inform them directly how, when and where they could present their claim and warning them that, since due to reasons beyond his control it had not been possible to comply with the agreement in its entirety; that is, to locate and forward to them the monies claimed, that they could claim it directly and consequently his fees were reduced from 33 1/3% to 20%. See Annex VIII of the Solicitor General's First Report. Contrary to what the Solicitor General indicates, the efforts were not fruitless. We admit that part of them were; the part whereby the bank refused access to the depositor's funds. For such reason said person was informed of the manner whereby he/she could locate his/ her monies and remit a reduced fee for the task of locating the funds. A fruitless effort would have been if an attempt had been made to collect from the person without warning him/her of where, how and when he/she could recover his/her money. It is worthwhile to point out that of more than 100 letters similar to that attached by the Solicitor General in her Annex VIII only less than 5 replies were received; in fact, none of the persons to whom the letters that the Solicitor General attaches to her Annex VIII remitted any fees whatsoever. It is evident that the letters advising these persons as to how, where and when to recover their

money are neither deceptive nor false nor do they induce to error. On the contrary, they are extremely clear, explaining where the money is, how can they claim it, when do they have to claim it and inviting them that if they had any doubt or question they could call the herein appearing party over the telephone. In addition to that, copies of the letters were sent to the legal divisions of Banco Popular and Banco Santander, wherefrom the instructions not to honor the claims of the herein appearing party had arisen.

7. The Solicitor General's appreciation contained in the first paragraph of page 7 [of the Spanish version] of her Second Report [page 9 of the English translation] that should the person be told how, when and where thay could claim their funds they would not retain his services is correct. But the question is, why did that indication have to be made? We further disagree with her averment in that same paragraph that the contention that it is to the bank to whom it pertains to offer orientation is untenable. As we indicated in our Reply, the law requires that the banks publish two notices in newspapers of general circulation about the unclaimed amounts, the bank being able to proportionately deduct the cost of said notices from the amounts it delivers to its depositors. If the bank, who has a contractual relationship as to debt and creditor with its depositors, does not utilize a different means than that required by law, why did the herein appearing party have to orient that person as to how to do so? We understand that what the herein appearing party did was a permissible direct solicitation and that the person was free to accept or reject his services. In fact, recently in the *El Nuevo Día* newspaper of Tuesday 25 August 1992, on page

83, Business Section, Exhibit 2, the Commissioner of Financial Institutions, Mrs. Carole Acosta, expressed that the Government of Puerto Rico has received in two years more than 3 Million Dollars in assets abandoned by consumers in financial institutions not covered by the commercial banking law and nearly 8 Million in respect to commercial banks. Mrs. Acosta explains that the Government received said monies when all accounts inactive for more than five years were referred to it. In that same newspaper article the Deputy Commissioner of Financial Institutions, Mr. Rubén Rodríguez, expressed himself to the effects that the person who benefits from the notice that the financial institutions must publish pursuant to the law is the person who has the inactive account, because he/she can recover the forgotten money instead of it having to be remitted to the Treasury of Puerto Rico, as required by law, if the claim is not made on or before the 10th of December of the year when the notice is published. Also quoted in that same article is the Vice President for Finance of the First Federal Savings Bank, Mrs. Annie Astor de Carbonell, saying that it was convenient for said institution for the person to appear and that the account would remain in deposit. Does it not appear interesting that the complainant party in the case at bar is a legal representative of the second most powerful bank in Puerto Rico? Obviously said bank was not interested in having an action on withdrawal of funds in August or September of the running year, but that it was convenient for them that eventually the depositor would visit the financial institution to reactivate said account through a minimal deposit of $10.00 or, what appears to be the norm, to enjoy such monies until the 10th of December of

that same year. This can not be conceived simply in terms of one depositor but in terms of the thousands of depositors in that situation and the millions of dollars that said accounts represent for the bank.

8. The aforesaid newspaper article ends by making a comparison between the funds that reached the Government in fiscal years 1991 and 1992. It must be pointed out that both the institutions not covered by the commercial banking law as well as those under the commercial banking law remitted less money to the Treasury in the year 1991 than in the year 1990 and it was in the year 1990 that this administrative complaint was filed. On page 7 [of the Spanish version] of her Second Report [page 9 of the English translation], the Solicitor General alleges that the best examples that she has in support of her allegations that the communications remitted by the herein appearing party turned out to be incomplete and deceptive are constituted by two additional complaints that she received against the herein appearing party after the filing of her First Report. She extensively narrates the case of Mr. Carmelo Martínez-Figueroa, Appendixes I, II and III to the Second Report, as well as the case of Atty. Marisol Flores-Cortés in respect to her client Dr. Luis Flores-Villar, Appendixes IV, V and VI of the Solicitor General's Second Report. Regrettably, as to this second case we do not know what could have been the concern that Atty. Marisol Flores-Cortés submitted before the consideration of the Ethics Commission of the Bar Association, Appendix IV, since from the Appendixes (IV, V and VI) included with the Solicitor General's Second Report in regards to this matter the concern of Atty. Marisol Flores can not be gleaned. Said Appendixes contain only

the letter of the Examining Officer of the Bar Association's Ethics Examining Committee to the then Solicitor General, Hon. Jorge E. Pérez-Díaz, of 7 October 1991, the Claim for Funds Under Notarial Oath addressed to Dr. Luis Flores-Villar, not filled out, Appendix V, and a copy of the notices published in a newspaper of general circulation, Appendix VI. For said reason we shall not comment about any "complaint" because we are not in any position to do so, but we will indeed comment in regards to Mr. Carmelo Martínez-Figueroa.

9. As it arises from Appendix III of the Second Report, on 13 September 1991 Mr. Carmelo Martínez-Figueroa forwarded to the herein appearing party a Claim for Funds Under Notarial Oath; this being one of those that the Banco Popular de Puerto Rico refused to honor. Dated as of 31 October 1991, the herein appearing party notified Mr. Carmelo of this fact, in turn advising him how, where and when he could claim said amount and adjusting the corresponding fees, Appendix II of the Solicitor General's Second Report. Nothing else was heard from Mr. Carmelo until his letter of 27 April 1992, addressed to District Collection Agency, Appendix I of the Solicitor General's Second Report. Said letter dated 27 April 1992 was the subject of a reply from the herein appearing party on 3 May 1992, Exhibit 3, a, wherein it was indicated that neither District Collection Agency nor any other person or collection agency had ever been authorized to perform any action whatsoever in the name and on behalf of the herein appearing party. Advantage was taken of the opportunity to explain to him the process that had been followed and at the same time to ask him for additional information on the actions that he had

taken. A copy of said letter was sent to District Collection Agency warning them that they could not perform any collection action in the name and on behalf of the herein appearing party. Mr. Carmelo replied on 18 May 1992, Exhibit 3, b, informing that on 27 September 1991 he had visited Banco Popular to withdraw some money without any problem whatsoever. Contrary to what Mr. Carmelo indicates in his letter of 27 April 1992, by 27 September 1991 action had already been taken with Banco Popular, Isabela Branch, to recover the money and the same had been denied by the Bank. What the foregoing shows is that although Mr. Carmelo could have become "confused" with the Claim for Funds, the reality is that the intention of the herein appearing party was not to confuse him with deceptive advertisements or inducive to error. If Mr. Carmelo became "confused" it may very well have been because he is an elderly person, blind, can not read nor write and depends totally on the charity of his neighbors, as he himself indicates. Nevertheless, in his letter of 27 April 1992 Mr. Carmelo himself indicates that he knew about the funds that he had with Banco Popular since 31 December 1985, funds that would have been transferred to the Department of the Treasury on 9 December 1991 had it not been because Mr. Carmelo had to purchase a "small refrigerator" because it is quite probable that if he had not taken any action with that money in 68 months and 26 days, he was not going to do so in 2 months and 12 days. In addition, in the letter of 31 October 1991 Mr. Carmelo was invited to call the herein appearing party should he have any doubt or question about this matter, which neither he nor the Bank did. How can a person be oriented if he does not establish

communication with the person that is supposed to orient him?

10. With respect to the case of Mr. Carmelo Martínez-Figueroa the Attorney General again insists on that the client is being deceived and cites one of the clauses of the claim, on pages 7 and 8 [of the Spanish version] of the Second Report [page 9 of the English translation]. She concludes, after citing this paragraph, that the incomplete information forwarded by the herein appearing party makes the contracting between the parties a deceitful one. We very respectfully understand that nothing of what is cited by the Solicitor General in said paragraph is incomplete information. On the contrary, it is extremely detailed. We have already admitted that, faced with the negative of Banco Santander and Banco Popular to honor the claims, the herein appearing party came upon the need to responsibly follow another course of action and faced with this new course of action he submitted alternatives to his fees. In respect to the other claimants and other financial institutions with which there was no such rejection of the claim, the contracted agreements were honored punctiliously. In fact, there is not even one single complaint in regards to persons who allege that the herein appearing party failed to thoroughly comply with the agreement to send that person the monies claimed. On the contrary, letters of appreciation have been received for the work performed, such as, for example, from Mrs. Sonia Santiago, Exhibit 4, a, and from Atty. Juan J. Gueits (affectionately known as "El Potro"), Exhibit 4, b.

11. The herein appearing party also exerted his best efforts to disinterestedly attempt to improve the process

for claiming the funds for the benefit of the depositors. To those effects he wrote a letter to the then Puerto Rico Commissioner of Insurance, the Hon. Miguel Villafañe-Señeriz, on 16 October 1991, Exhibit 5, narrating the unheard of case wherein the amount of $891.47 was claimed from South Continental Insurance Agency in the name and on behalf of Mr. Julio Fuentes-Montesino, being informed by South Continental Insurance Agency that no money corresponded to Mr. Fuentes because the agency had incurred in expenses related to the publication of the listing of unclaimed funds in a sum higher than the total of the unclaimed funds. In the aforesaid letter certain recommendations were made to the Commissioner of Insurance, not knowing what were the results of the letter since the same was never answered.

12. What is exposed on page 8 [of the Spanish version] of the Solicitor General's Second Report [page 10 of the English translation] about the contract between an attorney and his client is surprising. Precisely, on several occasions this Honorable Court has warned the attorneys of this forum about the desirabilty that attorney-client agreements and the fees to be charged be reduced to writing. The claim agreement remitted by the herein appearing party is patently clear with respect to the approximate amount to be recovered and the fees to be charged; again insisting that the contracting is free and voluntary and without any malice nor intent to harm anyone and with the conviction of an act not contrary to the rules of ethics that govern the profession.

13. On the other hand, we share the Solicitor General's concern about regulating advertisements by our

licensed profession. While he was a member of the Commission on Professional Ethics of the Bar Association, the undersigned on repeated occasions expressed his distress for the lack of support that exists in this jurisdiction for a lawyer to be able, *a priori*, to make a consultation on a matter of ethics. Normally the avenues of the judicial forums or of the Solicitor General are not available to him/her. When he/she resorts to the Ethics Commission of the Bar Association, in spite of the best wishes and good offices of the members and the staff of said Commission, consultations of a prospective nature are normally relegated to a second plane because of the urgency of attending to the accumulation of complaints before said Commission. The undersigned remembers that as a common and ordinary matter the Commission would meet once a week and would handle twelve or fifteen cases per evening, or handle four or six hearings on complaints. What the Solicitor General says in respect to the number of lawyers in Puerto Rico, the number of inhabitants, the limited territorial extension and the saturation of offers for legal services is quite true; we see the same every day in the main newspapers of Puerto Rico (especially in the classified ads sections), Exhibits 6, a and 6, b.

14. As to the merits of this particular case, we understand that the communication forwarded by the herein appearing party was not deceitful, that the person who received it had full and complete discretion to accept the offer or not and that if he/she accepted it, he/she had ample opportunity to communicate with the herein appearing party in order to clarify any doubt or question. Of the persons for whom their money was claimed, there

existed not one single complaint in regards to said action. There did not exist nor does there exist in the intent of the herein appearing party to deceive, confuse or induce to error any person whatsoever; on the contrary, the intent was to facilitate an effort that traditionally had been unattended in Puerto Rico, which entailed that millions of dollars were sent every year from the financial institutions in Puerto Rico to the State Treasury because the depositors did not know about their entitlement to claim said funds.

15. Recently this High Forum expressed itself about "an overreaction" among certain lawyers in the matter of the *Complaint of Atty. Alex González against Attys. Carlos Martínez-Texidor, Héctor Cuprill-Hernández, Antonio Bauzá-Torres and Rafael Elvira-Caballero*, CA-92-80. It is our very respectful opinion that it is quite possible that in this matter there has also been an over-reaction of the original complainant, Atty. Ismael H. Herrero, Jr., of the Law Offices of GONZALEZ-OLIVER, CORREA-CALZADA, COLLAZO-SALAZAR, HERRERO & JIMENEZ, perhaps motivated by matters before the Superior Court of Puerto Rico, San Juan Section, in which the herein appearing party is neither directly nor indirectly involved, but related to the matter of withdrawal of funds. From Annex I to our Motion of 18 March 1992, a copy of the letter from Atty. Herrero, Jr. to the Hon. Ivonne Casanova-Pelosi, Assistant Solicitor General, it arises that the herein appearing party communicated with Atty. Herrero in order to clarify any misunderstanding in the matter.

WHEREFORE, on the merits of the foregoing, it is very respectfully requested of this Honorable Court that,

pursuant to Rule 31 of the Rules of the Supreme Court of Puerto Rico, it order the dismissal and stay of this matter.

I CERTIFY: That I have forwarded a copy of this document to Atty. Ivonne Casanova-Pelosi, Assistant Solicitor General, Department of Justice, P.O. Box 192, Old San Juan, Puerto Rico 00902.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on 21 September 1992.

/Sgd/ (Unreadable)
ELI B. ARROYO
Counsel for the Herein
Appearing Party
P.O. Box 366829
San Juan, P.R. 00936-6829
BM 1368 Tel. 753-1767

---

**– CERTIFIED –**

To be a correct translation prepared by:
/s/ Ernesto Quidgley – 4-19-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

Exhibit 1, a

CERTIFIED TRANSLATION:

JUAN M. MASINI-SOLER, ESQ.
461 Ponce de León Avenue, Suite 200
Hato Rey, Puerto Rico 00917
Tel. 753-3692

**CLAIM FOR FUNDS UNDER NOTARIAL OATH**

CITY OF SAN JUAN

COMMONWEALTH OF PUERTO RICO

((There appears a photocopy of Puerto Rico Driver's License No. 1570368 issued to Sister Ma. Tomasina Rufino, Social Security Number 583-69-7082, issue date 29/03/91 and expiration date 29/03/95.))

I, *Sister Tomasina Bueno-Rufino, of the Congregation of the Sisters of Our Lady of Mercy and Charity*, as owner of funds in the amount of $ *(Unreadable)* approximately, arising from abandoned property, unclaimed property, assets of a dissolved or existing Corporation, unclaimed dividends or corporate distribution, proceeds of a life insurance policy, or funds arising from an inheritance or other escheated property, under notarial oath state and say the following:

That I am of legal age and that I have the legal standing to sign this document and that I reside in the aforesaid City of the Commonwealth of Puerto Rico.

That the Department of Recovery of Assets of the Law Office of ATTY. JUAN M. MASINI-SOLER has done the work of investigating, tracing and establishing that the undersigned may be entitled to the funds indicated in the

FIRST paragraph and that the undersigned wishes to recover said funds.

The undersigned does hereby appoint ATTY. JUAN M. MASINI-SOLER, his Representatives, Counsellors and Attorneys as his/her attorneys-in-fact to act in his/her name, place and stead in relation to all matters that the undersigned could do in regards to the claim for, transfer or distribution of the monies, credits or assets due to him/her. The undersigned grants to said attorney-in-fact full power and authority to receive the monies in the name and on behalf of the undersigned and to give a receipt and discharge for the same in his/her name and on his/her behalf. No person who pays the claim for monies or funds in favor of the undersigned will be required to verify the ultimate disposition of the same.

This Petition as Attorney Under Oath is in no way intended to limit the faculties of the appointee but to indicate that he has full authority to do all and any of the necesary [sic] actions that the undersigned might conduct as to the matter consigned in the FIRST paragraph.

For value received and for services rendered, the undersigned does hereby convey, assign and transfer to ATTY. JUAN M. MASINI-SOLER, his agents, legal representatives, counsellors, and successors and assigns a fee of thirty-three and one third per cent (33.33%) as fee for the search, legal expenses, attorney's fees, ordinary and extraordinary expenses, which will be paid to ATTY. JUAN M. MASINI-SOLER only upon ATTY. JUAN M. MASINI-SOLER as attorney-in-fact having satisfactorily received the funds on behalf of the undersigned. That prior to the successful collection of said funds, no

expense or cost whatsoever will be paid in advance by the undersigned.

The undersigned binds himself/herself at all times to indemnify ATTY. JUAN M. MASINI-SOLER, his agents, their respective legal representatives, successors and assigns, and any city, county, state government and federal government, their officers and employees (hereinafter the "Obligee(s)") and hold them harmless from all claims, actions and lawsuits, whether groundless or otherwise, and from and against all liabilities, losses, damages, judgments, costs and expenses, attorneys' fees and other expenses of every nature or character by reason of honoring or refusing to honor the original evidence of ownership when presented by or on behalf of the holder in due course of time, or a holder who appears to be or the Obligees believe is such, or the making of any payment, delivery or credit in respect to the original evidence of ownership without surrender thereof, whether or not caused by, or based upon, or arising out of inadvertence, accident, oversight, neglect or omission or failure to inquire into, contesting or litigate the right of any applicant to receive any payment, credit, transfer, registration, exchange or delivery in relation to the original evidence of ownership, or caused by, based upon or arising out of any other matter or thing whatsoever.

This PETITION FOR CLAIM OF FUNDS UNDER NOTARIAL OATH to request the recovery of funds is specifically limited to the funds identified in the FIRST paragraph, which have not been claimed by the undersigned for a period of not less than five (5) years. These funds do not include any tax refunds, benefits, payments,

credits, dividends or monies that have not been claimed by the undersigned for a period of five (5) years.

Date 23 August 1991

/Sgd/ Sister Ma. Tomasina Rufino
Signature

Affidavit # 1116 –

Sworn toand [sic] subscribed before me by *Sister Tomasina Rufino-Bueno, of legal age, single, Sister of the Order of Mercy and Charity,* Social Security No. 583-69-7082 and resident of Guaynabo, Puerto Rico, whom I personally know but who identifies herself before me through her driver's license Number 1570368. In San Juan, P.R., this 23rd day of August 1991.

/Sgd/ (Unreadable)
Attorney-Notary

((There is an Unreadable Round Notarial Seal.))

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**– CERTIFIED –**

To be a correct translation prepared by:
/s/ Ernesto Quidgley – 4-15-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

Exhibit 1, b

CERTIFIED TRANSLATION:

LAW OFFICES
**JUAN M. MASINI-SOLER**
ATTORNEY-AT-LAW & NOTARY PUBLIC
ESQUIRE BUILDING TEL. (809) 751-0447
PENTHOUSE SUITE 901 FAX. (809) 751-7800
VELA ST. & PONCE DE LEON AVE.
HATO REY, PUERTO RICO 00919

27 August 1991

Sister Tomasina Bueno
Sisters of Mercy and Charity, Corp.
HC 02 Box 8001
Guaynabo, P.R. 00971

Dear Sister Bueno:

"It is better to be pale once than to blush one hundred times."

It is rather embarrassing to write this letter to you. Embarrassing for us because you are our sisters in Christ and embarrassing for you because you owe to this brother some money that should have been paid when certain services were rendered.

Some weeks ago we write to you in regards to an amount of money in your name that appeared as unclaimed.

When your representatives visited our associate, Mr, Manuel Riego, in the best good faith and consideration we informed you where this money was and how it could be recovered. This is not normally done in such manner, but instead the corresponding documents are signed so

that then we can recover the money. Nevertheless, in our desire to help the Convent we did so in the manner that most rapidly would allow you to recover the money. We gladly accepted the promise to pay our fee once you had recovered the money, but it did not happen that way.

Let us be fair the ones towards the others. You recovered some money that you did you did not know you were entitled to recover; we were instrumental in your recovering the same. You have the recovered money and now we would like to have our fee. The amount recovered was a total of $3,591.78. The agreement was that our fee for locating the money and locating you would be 33% of said amount, that is, $1,197.14. That is the amount that you owe this office as fees.

However, in consideration of the Convent and if the payment is made within the next 15 days, we are willing to reduce the amount from 33% to 25%; that is, that the amount owed would be $897.95.

As the Puerto Rican folklore saying that I quote at the beginning of this letter goes, it is better to go through a disconcerting moment and learning something than to suffer many moments of shame. I trust that you will understand that we are only asking for what fairly and reasonably corresponds to us.

Should you have any doubt or question, please contact me at telephone 758-2090.

Sincerely,

/Sgd/ J. Masini
Atty. Juan M. Masini-Soler

JMMS:il

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**– CERTIFIED –**
To be a correct translation prepared by:

/s/ Ernesto Quidgley – 4-19-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)
232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

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Exhibit 1, c

CERTIFIED TRANSLATION:

LAW OFFICES
**JUAN M. MASINI-SOLER**
ATTORNEY-AT-LAW & NOTARY PUBLIC
ESQUIRE BUILDING — TEL. (809) 751-0447
PENTHOUSE SUITE 901 — FAX. (809) 751-7800
VELA ST. & PONCE DE LEON AVE.
HATO REY, PUERTO RICO 00919

21 November 1991

Sister Tomasina Bueno
Sisters of Mercy and Charity, Corp.
HC 02 Box 8001
Guaynabo, P.R. 00971

Dear Sister Tomasina:

I refer to our letter of 27 August 1991, copy enclosed, which is self-explanatory.

In the same I was requesting from you the payment of the legal fees corresponding to the Claim for Funds

made by you, pursuant to the efforts made by this office, in the amount of $897.95. As you will remember, this also represented a reduction because the true fee owed was $1,197.14. Said reduction was to the effects that the payment be made within the "next 15 days."

Two and a half months having elapsed since our letter without receiving any answer from your part, this letter is to require of you in a final and firm manner the payment of the fee owed to this office in the full amount; that is, $1,197.14, or we will find ourselves forced to proceed with the action on our claim for our fee through the corresponding official channels.

I urge you to avoid greater inconveniences by remitting the amount owed to our office or in its defect, to communicate with us in order to discuss the matter.

Sincerely,

/Sgd/ J. Masini
Atty. Juan M. Masini-Soler

JMMS:il

---

**- CERTIFIED -**
To be a correct translation prepared by:

/s/ Ernesto Quidgley - 4-19-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)
232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

Exhibit 2

CERTIFIED TRANSLATION:

*EL NUEVO DIA*, PAGE 83
TUESDAY 25 AUGUST 1993

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**The Commissioner of Financial Institutions, Carole Acosta, pointed out that the savings banks had the largest amounts.** (PHOTOGRAPH)

**Abandoned Assets Are Collected**

By MAGDALYS RODRIGUEZ
Of *El Nuevo Día*

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In two years, THE GOVERNMENT received more than $3 million in assets abandoned by consumers in financial institutions not covered by the commercial banks law.

Under a new law of 1989, federal savings banks, savings and loans associations, cooperatives, investments and finance companies, and international banks, among others, must refer to the Government all accounts that have been inactive for more than five years.

In addition, since the institutions will have to publish notices in at least one of the communications media, those persons who forgot accounts or assets will have a new reminder to go recover them or reactivate them. The other alternative is to leave them to the Government.

Most of the abandoned assets are accounts with little money. "Some $25 or so. It is very rare that it is a large amount, of thousands," said the Vice President for Finance of the First Federal Bank, Annie Astor de Carbonell.

Prior to the new Law on Monies and Other Abandoned or Unclaimed Liquid Assets, the institutions not covered by the Law on Banks had to become custodians of the assets abandoned by their clients.

The largest amounts were in the possession of the savings banks, according to the Commissioner of Financial Institutions, Carole Acosta. "The new law is a picture of the Law on Banks," she indicated in an interview.

**BUT SINCE** the Law on Banks does not apply to savings banks and other financial institutions, clients' assets that were abandoned for more than five years went into the inactive accounts of these institutions, notices were not published and neither were they referred to the Government, as the commercial banks must do.

"It is not so much the benefit for the Government although indeed there are revenues that go into the public funds (which will remain in custody for 10 years). In reality, the one who benefits is the person at the moment that it is published that he/she has an inactive account," said the Deputy Commissioner of the Office of Financial Institutions, Rubén Rodríguez.

The law requires that in August and September a notice be published about the money and other unclaimed liquid assets in the hands of the institution.

In the First Federal Savings Bank efforts were made to locate a client who left an inactive account of hundreds or thousands of dollars, said Astor de Carbonell. "It is convenient for us for the person to show up and that the account remain deposited," she added.

The President of the Ponce Federal Savings Bank, Rafael Blanco, said that usually the client goes to get his/her money. "But if they do not (when they did not go recover it), they went to the Treasury," he pointed out.

The publication of the two notices in a newspaper of general circulation costs thousands of dollars. A relief granted by the new law, as well as the commercial banks law, is that they can charge their expenses to the inactive accounts. "That will be the only item that may be charged against the unclaimed monies or other liquid assets," states a fragment of Law 36 of July 1989. The cost is proportionately discounted from every client, said Astor de Carbonell.

**THE NEW** law was enacted on 26 July 1989 but was implemented for the first time in 1990 in order to comply with the deadlines of said measure.

Since that time, the Office of the Commissioner of Financial Institutions has received $3.3 million from these institutions not covered by the commercial banks law.

In 1990, the Government received $2,378,367, of which $2,109,172 came from the savings banks. In Fiscal Year 1991-1992 the amount decreased to $1,004,242. And out of those, $710,627 came from the savings banks, Rodríguez reported.

In comparison with those years, the commercial banks forwarded to the Government $4,311,000 in 1990 and $3,773,000 in 1991, from inactive accounts.

The General Fund receives said monies, but the Government must reserve them for a minimum of 10 years, so as to afford the client an opportunity to recover his/her assets.

---

**– CERTIFIED –**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-19-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)
232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

Exhibit 3, a

CERTIFIED TRANSLATION:

LAW OFFICES
**JUAN M. MASINI-SOLER**
ATTORNEY-AT-LAW & NOTARY PUBLIC
ESQUIRE BUILDING TEL. (809) 751-0447
PENTHOUSE SUITE 901 FAX. (809) 751-7800
VELA ST. & PONCE DE LEON AVE.
HATO REY, PUERTO RICO 00919

6 May 1992

Mr. Carmelo Martínez-Figueroa
Rd. 474, Box 289
Galateo Bajo Wd.
Isabela, P.R. 00662

Dear Mr. Carmelo:

I refer to your letter of 27 April 1992, addressed to District Collection Agency, a copy of which you sent me.

First of all, I want to notify you that at no time have I authorized District Collection Agency nor any other person or collection agency to carry out any action whatsoever on my behalf for the collection of debts. This having been clarified, I also want to point out some other things to you.

When we sent you the form on Claim for Funds Under Notarial Oath at no time was any suggestion whatsoever made to you as to where might said funds be located. We merely informed you of such fact. From the analysis and investigation that we have conducted in your case, it arises that you had an inactive account with

Banco Popular de Puerto Rico, Isabela Branch, for more than five years. In fact, it seems to be that you did not reactivate said account until after you had received our notice on Claim for Funds.

Nevertheless, it is not nor has it ever been our interest to obtain an undue gain from any person whatsoever. We merely offered our services and you, freely and voluntarily, accepted them in the manner in which we made our presentation to you. Even so, had you communicated with us and/or had you answered the letters that we sent you, we would have indicated to you that if you did not desire to proceed with our services or if you did not desire to withdraw said funds, it is our policy to immediately cease our efforts and not to bill for our services. Regrettably, you never placed us in a position to inform you about that, because you never answered our communications after the date when you sent us the Claim for Funds Under Notarial Oath.

According to the information that we have, it was not until we attempted to recover the funds that the Bank communicated with you, allowing you to reactivate your account so as not to have to return your funds nor to remit them to the Commissioner of Financial Institutions as required by the law. In any event, just as I said earlier, a simple communication from you to us would have resolved this situation favorably for you.

I am forwarding a copy of this letter to District Collection Agency, warning them that they may not make any collection action in my name and on my behalf.

Before closing, I would very respectfully like to ask you a favor and it is that you tell me, if you wish to share such information with me, two things:

1. Who and how advised you to write the letter of 27 April 1992? and
2. Whether the information that I have about the reactivation of your account is correct.

This information is very important for me and I guarantee you and assure you that I will not use it in any manner whatsoever that may even remotely be harmful to you and, on the contrary, I will be very grateful for it. If you so desire, you may call me "collect" at my direct number, 758-2090.

Having nothing further on the particular and reiterating myself at your service if you desire additional information on this matter, I remain,

Sincerely,

/Sgd/ J. Masini
Atty. Juan M. Masini-Soler

JMMS:il

---

**- CERTIFIED -**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-19-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)
232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

Exhibit 3, b

CERTIFIED TRANSLATION:

**RECEIVED**

**MAY 26 1992**

**JUAN M. MASINI-SOLER**

ATTORNEY-AT-LAW

/Initials/ J.M.

Isabela, Puerto Rico
18 May 1992

Atty. Juan M. Masini-Soler
Penthouse 1 Esquire Building
Vela St. & Ponce De León Ave.
Hato Rey, Puerto Rico 00918

Dear Atty. Masini-Soler:

Answering your letter, I will only indicate that, as I informed you in my previous one, I am an elderly person, blind, and I can neither read nor write, who depend on my neighbors because I have no other family.

On or about the 27th of September 1991 and because my refrigerator had gone out of order, I went to the Banco Popular of Isabela to withdraw some money in order to purchase a "small refrigerator," having no problem at all. On that same day, upon my arival [sic] at my home, a

neighbor informed me that my name appeared in a list in a newspaper.

Sincerely,

Carmelo Martínez-Figueroa
Rd. 474, Box 241
Isabela, Puerto Rico 00662

((There is a copy of an envelope):

Carmelo Martínez-Figueroa
Rd. 474, Box 241
Isabela, Puerto Rico 00662

((There is a Postage Stamp for 29¢ postmarked San Juan, PR 009 PM 22 May 1992))

Atty. Juan M. Masini-Soler
Penthouse 1 Esquire Building
Vela St. & Ponce de León Ave.
Hato Rey, Puerto Rico 00918

---

**– CERTIFIED –**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-18-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

Exhibit 4, a

CERTIFIED TRANSLATION of a Handwritten Letter:

12/9/91

Dear Mr. Masini-Soler:

Please receive my greetings. This is to thank you because without your assistance I would have never known of the existence of the money that you helped me to recover. As I thank you for this, I am enclosing for you a check for the fees for your work.

Good health, good fortune and happiness for you and your dear ones.

Good luck.

Sincerely,

/Sgd/ Sonia Santiago

---

((There is a copy of an envelope)):

Sonia Santiago ((There is a Postage Stamp for 29¢
HC01 – Box 6116 Rd. 128 with an Unreadable Postmark.))
Yauco, P.R. 00698

Atty. Juan M. Masini-Soler
461 Ponce de León Ave.
John Morris Bldg., Suite 200
Hato Rey, P.R. 00918

---

**– CERTIFIED –**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-18-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

Exhibit 4, b

CERTIFIED TRANSLATION:

(Logo)

**Juan M. Masini-Soler**
**Attorney-At-Law &**
**Notary Public**

**P.O. Box 3367**
**Old San Juan,**
**Puerto Rico 00904**

28 October 1991

Mr. Juan J. Guiets
32 Sol Street
Ponce, P.R. 00731

Dear client:

We appreciate the trust deposited in us by authorizing us, under notarial oath, to perform the delicate and laborious task of withdrawing in your name and on your behalf certain unclaimed funds itemized as follows:

| | |
|---|---|
| Depository: Scotiabank de Puerto Rico | |
| Amount Claimed: | $444.84 |
| Less administrative expenses retained by the depository of unclaimed funds: | $ 15.03 |
| Less fees (~~33.33~~ 23.33%) agreed-upon 10% professional courtesy discount | $100.27 |
| Amount to be reimbursed: | $329.81 |

"Special Account" Check #053 (Enclosed)

We are pleased to have been of service to you in this matter and we take this opportunity to reiterate ourselves at your service for any future event.

Sincerely,

/Sgd/ J. Masini
Atty. Juan M. Masini-Soler

N/A: P.R. 1-91-51-1

To Atty. J.M.M.

Date 10/30/91 Time 4:25 a.m. (p.m.)

While You Were Out

M El Potro

Of

Phone
Area Code Number Extension

| | | | |
|---|---|---|---|
| Telephoned | [ ] | Please Call | [ ] |
| Wants To See You | [ ] | Will Call Again | [ ] |
| Returned Your Call | [ ] | URGENT | [ ] |

Message
Thanks for the check on
Claim for Funds.

**WilsonJones.** 803-02W
803-04W

---

**– CERTIFIED –**
To be a correct translation prepared by:

/s/Ernesto Quidgley 4-19-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

---

Exhibit 5

CERTIFIED TRANSLATION:

LAW OFFICES
**JUAN M. MASINI-SOLER**
ATTORNEY-AT-LAW & NOTARY PUBLIC
ESQUIRE BUILDING — TEL. (809) 751-0447
PENTHOUSE SUITE 901 — FAX. (809) 751-7800
VELA ST. & PONCE DE LEON AVE.
HATO REY, PUERTO RICO 00919

16 October 1992

Hon. Miguel Villafañe-Señeriz
Commissioner of Insurance
P.O. Box 8330
Santurce, P.R. 00910

Re: Unclaimed Funds

Dear Mr. Commissioner:

Pursuant to subparagraph 3 of Section 2605 of Title 26 of the Laws of Puerto Rico, the undersigned filed a claim before the South Continental Insurance Agency in

the name and on behalf of Mr. Julio Fuentes-Montesinos, in the amount of $891.47 (Exhibit 1).

Quite unbelievably we received informatiom from said Insurance Company to the effects that Mr. Fuentes was not entitled to any money because South Continental incurred in expenses related to the publication of the listing of unclaimed funds beyond the total of the unclaimed funds. I enclose herewith (Exhibit 2) the notice of unclaimed funds made by South Continental.

In the professional discharge of our responsibility towards our client, we asked South Continental to confirm for us in writing what they had told us in a conversation. Thus, we received a letter from the Comptroller of South Continental dated 30 September 1991 (Exhibit 3), which is self-explanatory.

I take the liberty to bring this matter to your attention because it is a situation that was not contemplated when establishing in Section 2605, *supra*, the noticing procedure. I do not harbor the least doubt that South Continental has faithfully complied with the wording of the law; but I wonder whether the spirit of the same is to the effects that the various persons who have unclaimed amounts be notified, but that said amounts can not be reimbursed because the notice published was more costly than the amounts involved. The Hon. Commissioner will note that in the case that I am bringing to his attention our client appeared with the highest amount in said notice. Therefore, it is to be assumed that none of the sixteen persons listed collected any monies whatsoever.

I again repeat that my only interest in this matter is to bring to your attention what I understand is a situation

that was not contemplated and at the same time to suggest a system in which for the cost of the published notice no more than "X" percent of the amount of the unclaimed funds may be charged. To continue with the current practice would be equivalent to approve a crass fault in the system.

Sincerely,

/Sgd/ J. Masini
Atty. Juan M. Masini-Soler

JMMS:il
Enclosures
cc: Mrs. María Hernández-Weyne

---

- CERTIFIED -
To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-19-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

CERTIFIED TRANSLATION:

EL NUEVO DIA, PAGE 63
TUESDAY 31 MARCH 1992


**EVELYN NARVAEZ-OCHOA**

(Photograph)

Roving Attorney or Psychologist of the "FRAGMENTS" program answers your questions with only one single call.

**If you have legal problems... all you need to do is call us.**

**1-900-463-2244**
DIVORCE
$2.00 per minute

**1-900-463-1133**
ALIMONY
$2.00 per minute

Orient yourself about your problems...

**1-900-463-2233**
MALTREATMENT
ABUSE
$2.00 per minute

**...NOW!!!**

Maximum 5 minutes. Over 18 years old only.
CALL MANAGEMENT COMMUNICATIONS, INC. N.Y. 10022


Exhibit
6, a

-- C E R T I F I E D --
To be a correct translation prepared by:

4-19-94

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

4-19-94 CERTIFIED TRANSLATION:

EL NUEVO DIA, PAGE 105
MONDAY 21 SEPTEMBER 1992

| SERVICES | |
|---|---|
| SERVICES<br>600<br><br>LAWYERS | **BANKRUPTCIES**<br>BAYAMON AND<br>ADJACENT AREAS<br>FREE CONSULTATIONS<br>ATTY. PEREZ-OBREGON<br>Comerío Ave., Riverview<br>(between Plaza Río Hondo<br>and the Sciences Park.)<br>787-9883 |
| **BANKRUPTCIES**<br>Without deposit:<br>**786-7220**<br>**843-4835** | **BANKRUPTCIES**<br>BAYAMON AND<br>**ADJACENT AREAS**<br>FREE CONSULTATIONS<br>From $100 plus expenses.<br>798-4870 |
| I truly resolve<br>your financial<br>problem, with or<br>without bankruptcy.<br>Free consultations.<br>Low fees.<br>ATTY. EGOZCUE, CPA<br>781-5635, 273-7143<br>793-8935, 720-5777 | **BANKRUPTCIES**<br>Atty. Madeleine Llovet-Otero<br>Orient yourself. Know your<br>rights under Bankruptcy Law.<br>Economic solution to probs.<br>Appts.-Flex. hours. 783-4367<br>412 De Diego Ave., Pto. Nuevo |
| **BANKRUPTCIES**<br>OVERWHELMED BY DEBTS?<br>Before you file for<br>Bankruptcy:<br>**KNOW YOUR RIGHTS!**<br>AVOID ATTACHMENTS.<br>FREE ORIENTATION.<br>INTERVIEWS IN YOUR<br>HOME.<br>RETIREES AND DISABLED<br>PERSONS.<br>**764-3646 / 250-0176**<br>**24 HOURS** | ■ **BANKRUPTCIES** ■<br>Damages. Protect your co-<br>debtors, home and auto. Avoid<br>attachments. ATTY. ROBLES:<br>883-1794 |
| | **BANKRUPTCIES**<br>Stop your creditors. Filing on<br>the same day. Civil and Criminal.<br>Atty. José M. González, El Monte<br>Mall B14, Muñoz Rivera, Hato Rey.<br>**756-5411, 754-1929** |

Exhibit
6, b

(Continued)

**BANKRUPTCIES**
CIDRA
and adjacent areas.
Free consultations.
Immediate appointments.
739-8844

**BANKRUPTCIES**
CAROLINA, Fragoso Ave.
across Plaza Carolina.
Acevedo Colón and
Vélez Wampl. 768-0085,
768-5286

ATTYS. TIRADO, MALDONADO AND ASSOC. 272-8727,272-8725
Experience in all kinds of cases. FREE CONSULTATION.
Reasonable fees. Also, Bankruptcies and Criminal.

**DIVORCES**
**DAMAGES**
Free consultation.
For Appointment:
**722-5957**

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Law Offices
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Santurce, P.R. 00915
727-3058 726-5904
STATE FEDERAL
Our Offices are open for practice in both forums.
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- Immediate advise.
- Reorganization of debts.
- Personal and commercial cases.
- Same day filing.
- Avoid an attachment.
- From $120 + expenses.

Monday through Friday
8 AM to 5 PM.
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**CAROLINA**
and adjacent areas, with free consultation. Immediate appointment.
■ 257-3922, 724-0341 ■

**FREE LEGAL CONSULTATION**
Divorces $75. Declaration of Heirs, $75. Change of Name, $75. Carrying of Weapon, $75. Deeds $100 + Expenses. Cases on Damages and Social Security.
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**BANKRUPTCIES**
**FREE CONSULTATIONS**
PROTECT YOUR HOME
YOUR CAR
YOUR CO-DEBTORS
Behind the Bankruptcy Court.
250-6949

■ **BANKRUPTCIES-DIVORCES** ■
Free Consultation.
For APPOINTMENT:
722-0389

**BANKRUPTCIES**
PROTECT YOUR CO-DEBTOR, PROTECT YOUR HOME AND YOUR AUTO. AVOID ATTACHMENTS.
Free consultation. Personal and commercial. Atty. Ramos and Atty. Padilla. 268 Muñoz Rivera, Suite 404, Hato Rey,
756-7256/7344.

(Continued)

From $75 Div. Mut. Consent, Plus Expenses. Other Services. FREE CONSULTATIONS. Bay., Levittown, S.J., Guaynabo. 794-3730

■ TAKE ADVANTAGE OF PROMOTION ■
Buy-Sell Deeds, Mortgages, Others. Divorce. Inheritances. Contracts, Weapons Bearing, Others. 783-5196

**BANKRUPTCIES**
Filed the same day of the consultation. 793-5790, 782-5364. Atty. Wilbert López-Moreno. 1270 Piñero Ave., Pto. Nuevo.

**BANKRUPTCIES**
VEGA BAJA / MANATI
**FREE CONSULTATIONS**
Payment Plan.
858-5624

GUAYNABO, BAYAMON, CUPEY
Bankruptcies, Dismissals, Divorces. APPOINTMENTS:
**790-7320**

ATTY. RAUL COLON
Criminal cases, damages, divorces. Payment plans.
Telephones: 758-8085, 757-4801

**OVERWHELMED BY DEBTS?**
**I really resolve your financial problem with low fees. Protect your home, Auto, and Co-Debtors.** FREE CONSULTATIONS. Personal and commercial cases. Reorganization of debts in or out of bankruptcy. Flexible hours. Atty. Dávila. Tels.:
759-8090, 759-9420,
753-2365

**■ CAGUAS ■**
**and adjacent areas. BANKRUPTCY. Immediate appointment and filing. ATTY. R. FIGUEROA**
744-7699

BANKRUPTCY DIRECT LINE
Free Orientation.
Hato Rey 250-1707
Ponce and Island
843-8408

**BANKRUPTCIES**
METROPOLITAN AREA
**FREE CONSULTATION**
Payment Plan
784-1113

**BANKRUPTCIES**
FREE CONSULTATIONS.
PAYMENT PLANS.
PROTECT YOU HOME, AUTO, ASSETS AND CO-DEBTORS.
Stop collections, attachments and lawsuits. 723-3460, 385-3462

App. 165

EL NUEVO DIA, PAGE 105
MONDAY 21 SEPTEMBER 1992

(Continued)

**BANKRUPTCIES. CONSULTATIONS 24 HRS.** Filed the same day. Atty. Jackeline E. Hernández-Santiago. 250-6439
250-0575

* * * * * * * * * * * * *

**-- C E R T I F I E D --**
To be a correct translation prepared by:

4-19-94

ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

App. 166

## APPENDIX M

CERTIFIED TRANSLATION:

IN THE SUPREME COURT OF PUERTO RICO

IN RE:

Atty. Juan M. Masini-Soler

No. AB-92-24

(Stamped):
FILED
CLERK'S OFFICE
SUPREME COURT OF
PUERTO RICO
'93 DEC 15 P3:21

**URGENT MOTION IN AID OF JURISDICTION ON STAY OF MANDATE**

TO THE HONORABLE COURT:

Comes now Atty. Juan M. Masini-Soler, *pro se*, and very respectfully STATES, ALLEGES AND PRAYS:

1. Dated as of 14 December 1993 the General Marshal of this Honorable Court served a Mandate wherein the undersigned attorney was notified of the opinion of this Honorable Court of 10 December 1993, as well as to seize forthwith the protocols and registers of affidavits of the herein appearing party.

2. We bring to the attention of this Honorable Court that there exists a respectful discrepancy between the General Marshal and the undersigned as to the interpretation of the meaning of "seiz[ing] **forthwith**" the aforesaid protocols and registers. We submit that such seizure should not take place until the Judgment issued by this Honorable Court becomes final and firm. Otherwise, the undersigned would be deprived, in respect to

his notarial practice, of the basic substantive and procedural guarantees as well as of those contemplated in the Regulations of this Honorable Court. We understand that the seizure, if necessary, must be at the time that the Judgment becomes final and firm.

3. In the Judgment issued by this Honorable Court the separation of the undersigned from the practice of law is decreed for a term of six (6) months, **"computed from the time that this [Judgment] becomes final and firm."** We understand that the same would become final and firm thirty (30) days after its noticing, that is, on 13 January 1994; date when said separation of six (6) months would begin.

4. We further consider that the reason for the seizure of said notarial work responds to Rule 13(q) of the Regulations of the Supreme Court which orders said seizure when the lawyer is separated from the exercise of his notarial practice, be it directly or **be it indirectly when ordering the broader separation from the exercise of the profession of attorney-at-law.** We understand that in our case it is for this latter reason and not for deficiencies in the notarial work.

5. We submit to the consideration of this Illustrious Forum that if the separation ordered in this case is from **the practice of law for six (6) months,** consequently the suspension of the exercise of notarial work is as a consequence of the broader separation from the practice of law and it should also be for those same six (6) months. To seize the notarial work forthwith would bear the consequence of separating the undersigned from his notarial

practice for **more than six (6) months**, an action which we understand is not the intent of this High Forum.

6. With great respect we also inform our intention of submitting a Petition for Reconsideration pursuant to Rule 45 of the Regulations of this Court through our legal counsel. We consider that said Petition would have the effect of staying the effective date of the separation Order alluded to herein. Nevertheless, to proceed with the seizure of the notarial work at this time would be to constructively extend the separation from the notarial practice for the additional term entailed by the processing of the consideration of our Petition for Reconsuderation [sic], to be filed shortly.

WHEREFORE, on the merits of the foregoing it is very respectfully prayed of this Honorable Court that it stay the processing of the seizure of the protocols and registers of affidavits of Atty. Juan M. Masini-Soler until, if necessary, the Judgment in this case becomes final and firm.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on 15 December 1993.

/Sgd/ Juan M. Masini Soler
ATTY. JUAN M. MASINI-SOLER
PENTHOUSE 1, ESQUIRE BLDG.
HATO REY, P.R. 00918-3622
TEL. 751-0447 BM-9332

**– CERTIFIED –**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-21-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

## APPENDIX N

CERTIFIED TRANSLATION:

IN THE SUPREME COURT OF PUERTO RICO

IN RE:

Atty. Juan M. Masini-Soler

No. AB-92-24

(Stamped):
FILED
CLERK'S OFFICE
SUPREME COURT OF
PUERTO RICO
'93 DEC 16 A9:22

**COMPLEMENTARY MOTION TO URGENT MOTION IN AID OF JURISDICTION ON STAY OF MANDATE**

TO THE HONORABLE COURT:

Comes now Atty. Juan M. Masini-Soler, *pro se*, and very respectfully STATES, ALLEGES AND PRAYS:

1. That on 15 December 1993 during the afternoon hours the undersigned filed an "Urgent Motion in Aid of Jurisdiction on Stay of Mandate." At the same time the General Marshal of this Honorable Court received the notarial work of the herein appearing attorney.

2. Given the case that the Motion of 15 December requested the stay of the mandate on processing, so that said prayer does not become moot, we complement the same to the effects that should this Honorable Court understand that the issues brought forth in our Motion in Aid of Jurisdiction have merits, it order the General Marshal and/or the Director of Inspection of Notarial Offices to return the notarial work delivered on 15 December 1993.

3. We do hereby state for the record that the Office of the General Marshal at all times has afforded us a professional and personal consideration treatment.

WHEREFORE, it is very respectfully prayed of this Honorable Court that through the official proceedings it GRANT our motions and it ORDER the return of our notarial work until such time as this matter becomes final and firm.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on 16 December 1993.

/Sgd/ Juan M. Masini Soler
ATTY. JUAN M. MASINI-SOLER
PENTHOUSE 1, ESQUIRE BLDG.
HATO REY, P.R. 00918-3622
TEL. 751-0447 BM-9332

---

**- CERTIFIED -**
To be a correct translation prepared by:

/s/ Ernesto Quidgley - 4-21-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, P.R. 00921
(809) 751-8334

---

## APPENDIX O

CERTIFIED TRANSLATION:

IN THE SUPREME COURT OF PUERTO RICO

| | | |
|---|---|---|
| RE: | * | NO. AB-92-24 |
| ATTYS. JOSE R. FRANCO-RIVERA AND JUAN M. MASINI-SOLER | * | (Stamped): RECEIVED CLERK'S OFFICE SUPREME COURT OF PUERTO RICO '93 DEC 28 P4:05 |
| | * | DEPT OF JUSTICE SOLICITOR GENERAL RECEIVED '93 DEC 28 PM 4:12 |
| ********** | * | |

– MOTION ON RECONSIDERATION –

TO THE HONORABLE SUPREME COURT:

Comes now the respondent JUAN M. MASINI-SOLER, through his undersigned attorneys, and very respectfully states:

INTRODUCTION

Through the Opinion and Judgment issued on the 10th day of December and notified on the 14th day next, this Honorable Court

> " . . . decrees the separation of Attys. José R. Franco and Juan M. Masini-Soler from the practice of law for a term of six (6) months,

computed from the date when the instant [Judgment] becomes final and firm."[1]

The grounds enounced to issue said Judgment appears on Page 12 of the Opinion wherein it is concluded that the respondent attorneys "flagrantly" violated Rule 35 in its requirements of sincerity and honesty. The Opinion explains that the violation was consumed when certain warnings or exceptions *were omitted* from the communication that the attorneys mailed to certain persons offering their professional services to them.

Because we consider seriously erroneous what was resolved in the case at bar, we respectfully pray for its reconsideration. In addition, because of the lack of clear precedents of this Honorable Court that have given an interpretation to the Constitution of the Commonwealth that recognizes for the herein appearing party at least the same guarantees that have already been recognized for lawyers in analagous circumstances under the clauses of the due process of law contained in the Fifth and in the Fourteenth Amendments to the Constitution of the U.S.A., this appearance is made under said provisions.[2]

---

[1] In spite of the effective date of the Judgment, the herein appearing party was required to turn in his notarial protocols – which he did – since 15 December past.

[2] As a consequence of the suspension of the exercise of the profession by Atty. Juan Masini-Soler decreed in the case at bar, the United States District Court for the District of Puerto Rico has already issued to him an Order to Show Cause whereby he should not also be suspended from practicing the profession before it. (See Exhibit A). Said Court would resolve the controversy under said provisions. *Theard v. U.S.*, 354 U.S. 278 (1957); *Selling v. Radford*, 243 U.S. 46 (1917); *In re Ruffalo*, 390 U.S. 544 (1968).

We further invoke the doctrine of minimum guarantees for this Honorable Court to recognize for the herein appearing party under our Constitution at least equal rights to those recognized under the Constitution of the United States. *R.C.A. Communications, Inc. v. Government of the Capital*, 91 DPR 416 (1964); *People v. Dolce*, 105 DPR 422 (1976); *Rodríguez v. Commonwealth*, 92 JTS 63 and others.

## WHAT WAS RESOLVED IN THE OPINION

The decision at hand has its origin in some letters that the herein appearing party forwarded to the clients of certain banking institutions, offering them his services in order to claim in their name the funds that they had in inactive accounts, as this had been notified by way of a public notice in the newspapers. The Opinion discusses the correctness of said action from two points of view. In the first place it analyzes the constitutional developments in the United States in relation to lawyers' advertisements under the clause of freedom of speech. In that aspect it concludes, following *Shapero v. Kentucky Bar Association*, 486 US 466 (1987) that "the mailing of letters that are nondeceptive or nonconducive to error offering the professional services of a lawyer to persons with problems known by the lawyer enjoys protection under the First Amendment." However, the Opinion *does not decree* the unconstitutionality of Rule 34[3] even when it would be

---

[3] Rule 34. Instigation or promotion of lawsuits.

"A lawyer who for the purpose of gain or profit and without being solicited to offer his/her legal counsel or advice, urges or stimulates potential clients in any manner whatsoever to initiate judicial or other kinds of claims is acting contrary to

extremely difficult – if not impossible – to sustain it.[4]

---

the high precepts of the profession. Also contrary to the sound practice of the profession is that an attorney, without having been required to do so, whether done personally or through other persons, investigates or researches defects in titles or other possible sources or causes of claims for the purpose of somehow obtaining a gain, profit or benefit through the rendering of his/her professional services.

It mars the integrity and the prestige of the profession and it is highly reproachable for an attorney, either acting directly or through intermediaries or agents, to carry out actions to obtain for himself or herself cases or claims wherein to intervene or to furnish the same to other lawyers. In a like fault incurs a lawyer who provides or offers benefits, favors or compensation of any kind whatsoever to public employees, insurance adjusters or other third parties for the purpose of gaining their favors for the referral of matters that may give rise to claims or cases and thus provide the lawyer with an increase in his/her clientele.

. . . .

. . . .

[4] This is a serious omission in the Opinion. The unconstitutionality of the Rule having been decreed, the herein appearing party could not be chastised for violating the same, because he would be being chastised for violating a null provision, for the reason that it is unconstitutional. *Bates v. State Bar of Arizona*, 97 S. Ct. 2691 (1977); *People v. Hernández-Colón*, 118 DPR 891, 898 N (5) (1987). We clarify that this does not have to do with the herein appearing party challenging the constitutionality of the Rule for its being excessively encompassing; it has already been resolved that a lawyer can not challenge a rule of professional conduct about commercial language unless he/she argues that the same is unconstitutional in relation to its application to his/her own conduct. *Ohralik v. Ohio State Bar Ass'n.*, 98 S. Ct. 1912, n. 20 (1978). This latter matter is what the Honorable Court has not yet ruled upon.
About Rule 36, the following has been said:

> "*It seems clear* that Rule 36 of Professional Ethics of Puerto Rico, approved in 1980 and still in force, as

Concluding that the herein appearing party can not be sanctioned because of the mere fact of mailing letters, then the Opinion discusses the actions in the light of Rule 35. In that regard, it concludes that the decreed suspension of the practice is proper because the duty of sincerity and honesty imposed by said Rule required the warnings and clarifications omitted. The validity of requiring such clarifications is supported by the ruling in *Zauderer v. Office of Disciplinary Counsel*, 105 S.Ct. 2265 (1985). In that respect, in its footnote 4 the Honorable Court states that:

> "According to this decision, the regulation on contents requirements has a lesser impact on the interests of the advertiser than the prohibition; thus, in order to lessen the possibility of confusion or deceit, *there may exist warnings or exceptions.*" (Cite omitted). (Emphasis ours).

## THE CORRECTNESS OF THE RESOLUTION

A serious error in the Opinion resides in that the provisions of a general nature of Rule 35 have been resorted to, in order to rule and establish certain concrete warnings that the Honorable Court understands that the herein appearing party should have included in his letter and – as it is understood – he failed to do so. We respectfully draw attention that the very case of *Zauderer* resolves that the clause of the due process of law of the

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well as some expressions of jurisprudence, have constitutional flaws. Compare the same with what was resolved by the Federal Supreme Court, especially in the cases of *R.M.J.* and *Zauderer, supra.*" II R. Serrano-Geyls, *Constitutional Law of the United States and Puerto Rico*, 1440 (1988).

Constitution of the U.S.A. precludes the suspension or disbarment of a lawyer under those circumstances. Let us see.

In its pertinent part, Rule 35 provides as follows:

> The conduct of any member of the legal profession before the courts, towards his/her clients and in his/her relations with his/her colleagues must be sincere and honest.

There is no doubt that such text does not make any reference whatsoever to the contents of a professional advertisement. Therefore, no member of the Puerto Rican legal profession could have known, until today, that by sending a letter offering his/her professional services he/she had to explain to the addressee that "the funds involved were deposits in inactive accounts" nor that "they could recover the deposited funds without the need for the legal services of a lawyer," as the Opinion has now resolved. It is, then, necessary to determine whether faced with such situation the due process clause allows that the lawyer who omitted said warnings be suspended or disbarred.

At its bottom, the problem originates in the scope of the doctrine of vagueness, in the context of professional discipline. A well-known author describes the situation as follows:

> Nowhere does the uncertainty of the philosophy behind lawyer discipline manifest itself more than in the standards used by the lawyer codes and courts to define the grounds for which professional discipline should be imposed. One set of standards attempts to predict the likelihood that a lawyer in the future will violate important norms.

> But another set of standards merely holds lawyers who have engaged in questioned conduct in the past to very high standards with little effort to assess the lawyer's ability to perform professional functions. A similar ambiguity characterizes the judicial approach to the question whether a lawyer should be held to an expansive or merely to a narrow reading of the lawyer codes.
>
> . . . .
>
> Yet if anything is clear, it is that many provisions of the lawyer codes are plainly imprecise. Indeed, imprecission has probably been purposefully drafted into each of the lawyer codes. The 1908 Canons, in typically lofty phrases, argued that vagueness was a desired quality in drafting method because of the myriad and unpredictable ways in which questions of proper conduct might arise:
>
> . . . .
>
> Unnecessary breadth is to be regretted in professional rules that can be used to deprive a person of his or her means of livelihood through sanctions that are universally regarded as stigmatizing. Vague mandatory rules for lawyers create several difficulties. Plainly, they can be applied corruptibly or for reasons of impermissible bias . . . Vague phrases are also objectionable because they substantially dilute the procedural protections that otherwise narrow the area within which agencies could act arbitrarily or mistakenly.

Wolfram, *Modern Legal Ethics*, 85, 87 (1986).

The same subject is approached by Professor Kaufman in the following terms:

What will happen if a very general disciplinary rule is used as the basis for the imposition of discipline? *In re Ruffalo*, 90 U.S. 544 (1968), may provide some assistance. The Supreme Court reviewed a disbarment by a federal court of appeals that had been based on a prior state court disbarment. One ground for the state disbarment had been that the lawyer, who handled a lot of Federal Employer's Liability Act cases for plaintiffs, had hired an employee of the B. & O. Railroad as an investigator. He occasionally had the employee investigate suits against the B. & O. There was no evidence that the employee investigated cases in the yard where he worked, or that he used confidential information, or worked for the lawyer on company time.

The Ohio Supreme Court nevertheless concluded that "one who believes that it is proper to employ and pay another to work against the interest of his regular employer is not qualified to be a member of the Ohio Bar." *Mahoning County Bar Ass'n v. Ruffalo*, 176 Ohio St. 263, 269, 199 N.E.2d 396, 401 (1964). The federal district court found no misconduct, but the lawyer was disbarred by the Court of Appeals for the Sixth Circuit. The Supreme Court reversed the Court of Appeals because its decision was infected by procedural defects amounting to a denial of due process in the state court proceeding. Justices White and Marshall disagreed with the procedural basis for the majority's decision but concurred on the merits. In considering general standards for disbarment, Justice White stated (390 U.S. at 555):

> . . . members of a bar can be assumed to know that certain kinds of conduct, generally condemned by responsible men, will be grounds for disbarment. This class of conduct certainly includes the criminal offenses traditionally known as *malum in se*. It also includes conduct which all responsible attorneys would recognize as improper for a member of the profession.

He then noted that neither of those situations was present in *Ruffalo*, where reasonable people might, and in fact did, differ, and went on to say (390 U.S. at 556):

> I would hold that a federal court may not deprive any attorney of the opportunity to practice his profession on the basis of a determination *after the fact* that conduct is unethical if responsible attorneys would differ in appraising the propriety of that conduct.

This view is, I think, very helpful to an understanding of those Disciplinary Rules of the Model Code that contain very general language. It indicates that *there are some categories of conduct for which there can be disciplinary action even though there is only a prohibitory rule in the Model Code, or no rule at all, but that when one gets into a doubtful area there must be specificity* – and *Ruffalo* is such a case. (Emphasis ours)

Kaufman, *Problems in Professional Responsibility*, 667-668 (3rd. ed.)

This Honorable Court has not remained foreign to such developments. In *In re Guzmán-Géigel*, 113 DPR 122, 129 (1982) it made the following expression:

> It is not necessary that we express ourselves at this time on the particular, in view of the result that we reached. Nevertheless, it is convenient to remember that suspension, as well as disbarment, are penalties or punishments imposed on a lawyer. *In re Ruffalo*, 390 U.S. 544, 550 (1968). Any provision of law that, like the one that is the object of the instant examination, involves a penalty and a disciplinary sanction as a consequence of its violation, can not be conceived in terms so ambiguous that it does not allow the reasonable inference of the proscribed conduct. *People v. Santiago Vázquez*, 95 DPR 593, 595 (1967). *Persons of common and ordinary intelligence* – we have said – *should not have an obligation to guess as to the meaning of the statute. People v. Mantilla*, 71 DPR 36, 40 (1950). (Emphasis ours)

In the concrete case of the warnings or disclosures that may be required of a lawyer who offers his/her services, the Supreme Court of the United States has resolved – *unanimously* – that the suspension or disbarment of a lawyer because he/she omitted clarifying language that is not contained in precise rules approved beforehand, gives rise to serious constitutional issues. Said Court expressed itself as follows:

> The vagueness of the Ohio Supreme Court's opinion regarding precisely what an attorney must disclose in an advertisement mentioning a contingent fee is, however, unfortunate. It is also worth noting that DR 2-101(B)(15), the only explicit reference in the Ohio rules to a disclosure requirement involving contingent fees, does not on its face require any disclosures

except when an advertisement mentions contingent-fee rates – which the appellant's advertisement did not do. Because '[a] relevant inquiry in appraising a decision to disbar is whether the attorney stricken from the rolls can be deemed to have been on notice that the courts would condemn the conduct for which he was removed,' *In re Ruffalo*, 390 U.S. 544, 554, 88 S.Ct. 1222, 1228, 20 L.Ed. 2d 117 (1968) (WHITE, J., concurring in result), it may well be that for *Ohio actually to disbar an attorney on the basis of its disclosure requirements as they have been worked out to this point would raise significant due process concerns.* Given the reasonableness of the decision that appellant's omissions created the potential for deception of the public, however, we see no infirmity in a decision to issue a public reprimand on the basis of those omissions. And, of course, *were Ohio to articulate its disclosure rules regarding contingent fees in such a way that they provided a sure guide to the advertising attorney,* neither the Due Process Clause nor the First Amendment would preclude disbarment as a penalty for the violation of those rules. *Zauderer v. Office of Disciplinary Counsel*, 105 S.Ct. 2265, 2283 N. 15 (1985). (Emphasis ours).

Those expressions, that surely ban the sanction imposed on the herein appearing party, were harshly criticized by Justices Brennan and Marshall, in their concurring and dissenting opinion. They understood that no punishment whatsoever is proper in the absence of a valid legislative or judicial rule that would pre-require such expressions of warning. Because of the weightiness of their arguments, we must bring them before Your consideration:

A regulation that "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." The Fourteenth Amendment's Due Process Clause "insist[s] that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." This requirement "applies with particular force in review of laws dealing with speech," "a man may be the less required to act at his peril here, because the free dissemination of ideas may be the loser."

These guarantees apply fully to attorney disciplinary proceedings. Given the traditions of the legal profession and an attorney's specialized professional training, there is unquestionably some room for enforcement of standards that might be impermissibly vague in other contexts; an attorney in many instances may properly be punished for "conduct which all responsible attorneys would recognize as improper for a member of the profession." But where "[t]he appraisal of [an attorney's] conduct is one about which reasonable men differ, not one immediately apparent to any scrupulous citizen who confronts the question," *and where the State has not otherwise proscribed the conduct in reasonably clear terms, the Due Process Clause forbids punishment of the attorney for that conduct.*

. . . .

Although I agree that a State may upon a proper showing require a costs disclaimer as a prophylactic measure to guard against potential

deception, and may thereafter discipline attorneys who fail to include such disclaimers, Ohio had imposed no such requirement at the time Zauderer published the advertisement, as the Court acknowledges. The State instead has punished Zauderer for violating requirements that did not exist prior to this disciplinary proceeding.

. . . .

The reprimand brands Zauderer as an unethical attorney who has violated his solemn oath of office and committed a "willful breach" of the Code of Professional Responsibility, and it has been published in statewide professional journals and the official reports of the Ohio Supreme Court. This Court's casual indifference to the gravity of this injury inflicted on an attorney's good name demeans the entire legal profession . . . In light of Ohio's vague rules, the governing authorities' refusal to provide clarification and guidance to Zauderer, and the Ohio's Supreme Court's "failure to specify precisely what disclosures [are] required," Zauderer will hereafter publish advertisements mentioning contingent fees only at his own peril. *No matter what disclaimers he includes, Ohio may decide after the fact that further information should have been included and might, under the force of its rules, attempt to suspend him indefinitely from his livelihood. Such a potential trap for an unwary attorney acting in good faith not only works a significant due process deprivation, but also imposes an intolerable chill upon the exercise of First Amendment rights. Zauderer, supra,* 2289-2292. (Cites omitted) (Emphasis added)

What was indicated by those Justices is highly pertinent to what has occurred in the case at bar. The opinion has labeled the herein appearing party as a "flagrant"

violator of Rule 35 and has imposed on him the most severe and humilliating sanction that a lawyer may receive, as though he were a common criminal.[5] Even worse, who in Puerto Rico will dare exercise his/her right to mail letters offering professional services that the opinion itself recognizes, when the number of warnings or disclosures that may be required after the fact is infinite? The acknowledgement of a right is of very little or of no value if the validity of its exercise is subject to compliance with unknown and unsuspected conditions.

The opinion of this Honorable Court also finds a violation of Rule 35 by reason that "we are before a *modus operandi* which is not incidental, but skillfully planned – the impressive Department of Recovery of Assets is stressed – for the only purpose of obtaining a gain through the unreasonable charge of one-third as fees in an action that of itself is simple, *not controversial* and of a routine nature." This expression, which is identified as one of the actions that are "false, deceptive or conducive

---

[5] Quite candidly we express that the severity of the sanction that has been selected for the herein appearing party results unexplainable for us. Your earlier cases about attorneys' advertisements had never suspended the attorney concerned. In *Ibarra-Ortega*, 112 DPR 434 (1982) and *Germán González*, 112 DPR 430 (1982) modest economic sanctions were imposed. In *Valentín González*, 115 DPR 68 (1984) a censure and reprimand were sufficient. In addition, Your line of precedents in this area has for it the distinction of never having approved *on even a single occasion* the attorney's course of action. For those members of the profession who make an effort not to find themselves involved in disciplinary incidents, this judicial trajectory effectively operates to inhibit the exercise ("chilling effect") of the freedom of speech that is said to have been acknowledged.

to error," appears to stem from a judgment about two different issues that we must highlight and clarify.

In the first place, there is no controversy about the fact that the mechanism utilized to obtain the clientele was planned and for purposes of obtaining a gain. Both matters have already been considered by the Supreme Court of the United States, precisely in the context of freedom of speech in commercial language. Both matters have been considered valid.

About the planned mailing of letters to potential clients, said Court has stated the following:

> The court below disapproved petitioner's proposed letter solely because it targeted only persons who were "known to need [the] legal services" offered in his letter, . . . rather than the broader group of persons "so situated that they might in general find such services useful." Generally, unless the advertiser is inept, the latter group would include members of the former. The only reason to disseminate an advertisement of particular legal services among those persons who are "so situated that they might in general find such services useful" is to reach individuals who *actually* "need legal services of the kind provided [and advertised] by the lawyer." But *the First Amendment does not permit a ban on certain speech merely because it is more efficient;* the State may not constitutionally ban a particular letter on the theory that to mail it only to those to whom it would most interest is somehow inherently objectionable. *Shapero v. Kentucky Bar Ass'n, supra,* 473-474. (Emphasis ours)

Similarly, the Federal Supreme Court has resolved that there is no incompatibility between the worthy and professional exercise of a practice of law and to obtain a gain therefrom. Precisely the contrary argument was adduced in the normative case of *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). The Court resolved as follows:

> We recognize, of course, and commend the spirit of public service with which the profession of law is practiced and to which it is dedicated. The present Members of this Court, licensed attorneys all, could not feel otherwise. And we would have reason to pause if we felt that our decision today would undercut that spirit. But we find the postulated connection between advertising and the erosion of true professionalism to be severly strained. At its core, *the argument presumes that attorneys must conceal from themselves and from their clients the real-life fact that lawyers earn their livelihood at the bar.* We suspect that few attorneys engage in such self-deception. And rare is the client, moreover, even one of modest means, who enlists the aid of an attorney with the expectation that his services will be rendered free of charge. (Emphasis added)

In the second place, it becomes difficult to understand the relationship between conduct that is "false, deceptive or conducive to error" and the determination that the fees indicated in the letters are unreasonable. Such decision results in being instead an adjudication of a violation of Rule 24 about Fixing of Fees. Should it be so, we respectfully state that the same must also be re-examined.

We have closely examined both reports from the Solicitor General's Office and none of them charged a violation of said Rule. Although in disciplinary proceedings such a precise notice of the charges as in criminal cases is not necessary, "the notice must inform the lawyers of the nature of the charges against him or her in sufficient detail to permit the lawyers to prepare a defense." Wolfram, *supra*, 102-103. As was resolved in *In re Ruffalo*, 390 U.S. 544 (1968):

> The charge must be known before the proceedings commence . . . This absence of fair notice as to . . . the precise nature of the charges deprived petitioner of procedural due process.

Naturally, the consequence of this absence of notice has entailed that the herein appearing party has not had the least opportunity to face the charge and present evidence that gives a basis for this Honorable Court to make a determination, grounded on some record, as to the reasonableness of the fees.

We have one final issue left. This Honorable Court has determined that it was necessary that the herein appearing party inform the addressees of the letter "about the source of the funds that he intended to recover" and about the possibility that the addressee undertake such action personally, without the need for legal assistance. This Honorable Court has understood that these requirements are "reasonably related to the state's interest in preventing deceit of consumers." *Zauderer, supra*, on page 2282. (Translation ours). Reasonable persons may differ about whether the Puerto Rican consumer is so naive as to feel compelled to retain a lawyer who mails him/her a letter of this nature. It must

be remembered that the letter was to offer professional services; it was not a notice that the consumer had certain funds that he/she could claim. By law, this notice corresponds to the depository institutions and in them the consumer learns about what the Honorable Court has required that the attorney inform him/her.

Regardless of the foregoing, Your attention must be drawn to the fact that the text of the "Claim for Funds" that the addressee of the letter was supposed to subscribe before a notary, makes reference to the faculty of the latter to submit his/her own claim in *two* places. In the second paragraph of its text, as it appears on pages 2 and 3 of the Opinion, the following is indicated:

> The undersigned does hereby appoint ATTY. ___, his Representatives, Counsellors and Attorneys as his/her attorneys-in-fact to act *in his/her name,* place and stead *in relation to all matters that the undersigned could do* in regards to the claim . . . (Emphasis ours)

Further down, in the next paragraph of that same document – which is not transcribed in the opinion – the text states as follows:

> This Petition for Claim Under Notarial Oath is not intended to limit the powers of the attorney-in-fact, but to indicate that he has the full authority to do each and every necessary thing *that the undersigned could do* in relation to the matter mentioned in the FIRST paragraph. (Emphasis ours)

We respectfully submit that all of the foregoing merits a close re-examination of the determination that the herein appearing party incurred in improper conduct

and that he deserves to be suspended from the exercise of the profession. We reiterate our position that in order to do so a resolution be issued in accordance with the rights to freedom of speech and due process of law as interpreted under the Constitution of the United States of America. It is so respectfully requested.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, on 28 December 1993.

I CERTIFY: That on this date I have forwarded a copy of this document to the Solicitor General, Department of Justice, P.O. Box 192, San Juan, PR 00902.

/Sgd/ (Unreadable)
ELI B. ARROYO (1363)
P.O. BOX 366829
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TEL. 753-1767

/Sgd/ (Unreadable)
SANTIAGO SOLER-FAVALE
(1569)
P.O. BOX 195357
SAN JUAN, PR 00919-5357
TEL. 751-0447

/Sgd/ (Unreadable)
MARICARMEN RAMOS DE
SZENDREY (5883)
METROPOLITAN
PROFESSIONAL PARK
1781 ROAD 21, SUITES 802
and 804
SAN JUAN, PR 00921
TELS. 273-7535 AND/OR 273-7875
FAX 273-7875

- CERTIFIED -

To be a correct translation prepared by:

/s/ Ernesto Quidgley 4-22-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

EXHIBIT A

R/12-23-93

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

| | | |
|---|---|---|
| IN RE: | * | |
| JUAN M. MASINI SOLER | * | MISC. 93-0066 H4 |
| BAR NO. 201902 | * | |
| | * | |

ORDER
(Filed Dec. 21, 1993)

It has now come to the attention of this Court that on December 10, 1993 Mr. Juan M. Masini Soler was suspended for six (6) months from the practice of law by the Supreme Court of the Commonwealth of Puerto Rico.

It is hereby ordered that pursuant to Rule 211.2 of the Local Rules of this Court Mr. Juan M. Masini Soler show cause in writing within 30 days of the service hereof why disciplinary action should not be taken against him.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 21st day of December 1993.

LYDIA PELEGRIN
Clerk of Court

/s/ Jose M. Morales
By: JOSE M. MORALES
Chief Deputy Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing has been mailed to Mr. Juan M. Masini Soler, Esquire Bldg., Penthouse Suite 901, Vela St. & Ponce de León Ave., Hato Rey, P.R. 00919.

/s/ Jose M. Morales
JOSE M. MORALES
Chief Deputy Clerk

## APPENDIX P

CERTIFIED TRANSLATION:

**IN THE SUPREME COURT OF PUERTO RICO**

| | |
|---|---|
| **IN RE:** | **NO.: AB 92-24** |
| **ATTYS. JOSE R. FRANCO-RIVERA** | (Stamped): FILED CLERK'S OFFICE SUPREME COURT '94 JAN 27 P3:27 |
| **AND JUAN M. MASINI-SOLER** | |

**SECOND MOTION ON RECONSIDERATION**

**TO THE HONORABLE COURT:**

**COMES NOW** attorney Juan M. Masini-Soler, through the undersigned attorneys, and very respectfully STATES AND PRAYS:

### I. INTRODUCTION

With the greatest respect, we reiterate the petition for reconsideration of the decision issued in the instant case, whereby the respondent is suspended from the exercise of the profession for failing to include, in a document he disseminated, certain information that this High Forum now understands should have been included. The respondent's motion on reconsideration was ruled DENIED through an order notified on 24 January 1994.

Pertaining to the inherent authority that the Judicial Branch has in order to regulate the legal profession, a long time ago the Supreme Court of the United States expressed that:

> "The power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility; but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court, as the rights and dignity of the court itself." ***Ex parte Secombe***, 60 US (19 How) 9, 13 (1856).

Translated into modern legal wording, the foregoing means that the inherent power to regulate the profession is limited by the Constitution. No attorney may be deprived of the exercise of his/her profession by the operation of rules that violate his/her right to freedom of speech or other fundamental rights.

**The decision entered in the instant case violates the clear expressions of the Supreme Court of the United States when it interprets the contours of the First Amendment and the clause on the due process of law in their application to commercial expressions by lawyers. It is also in disagreement of this *curia* itself on these particulars. Lastly, it decreases the rights under the Constitution of the Commonwealth of P.R. in the areas of freedom of speech and due process by suppressing their growth beyond the minimal federal guarantees. *Arroyo v. Rattan*, 117 DPR 35, 60 (1986); *People v. Torres-Albertorio*, 115 DPR 128, 134 (1984); *PRTC v. Martínez*, 114 DPR 328, 338 (1983); and *RCA v. Government of the Capital City*, 91 DPR 416, 427 (1964), among others.**

II. ERRORS POINTED OUT FOR RECONSIDERATION

When issuing the aforesaid judgment and the opinion whereon the same is based, we very respectfully hold that the Honorable Court committed at least the following errors:

A. TO IMPOSE RETROACTIVELY DISSEMINATION REQUIREMENTS ON THE RESPONDENT'S WRITTEN COMMERCIAL COMMUNICATION IN VIOLATION OF HIS RIGHT TO "DUE NOTICE" GUARANTEED BY THE CONSTITUTIONAL CLAUSES OF THE U.S.A. AND P.R. ABOUT THE DUE PROCESS OF LAW.

B. TO DECREE AN EXCESSIVELY AMBIGUOUS RULE AND WITH UNREASONABLE DISSEMINATION REQUIREMENTS IN VIOLATION OF THE RESPONDENT'S RIGHT TO FREEDOM OF SPEECH GUARANTEED BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE U.S.A. AND ARTICLE II, SECTION 4 OF THE CONSTITUTION OF P.R.

C. TO SUSPEND THE RESPONDENT WITHOUT PRIOR FILING OF CHARGES, WITHOUT FIRST HOLDING A HEARING, THROUGH DETERMINATIONS THAT ARE NOT SUPPORTED BY THE RECORD OF THE CASE AND WITHOUT A REAL OPPORTUNITY FOR THE RESPONDENT TO DEFEND HIMSELF FROM THE CHARGE OBJECT OF THE SANCTION, ALL OF WHICH VIOLATES THE RESPONDENT'S RIGHT TO A DUE PROCESS OF LAW UNDER THE CONSTITUTIONS OF THE U.S.A. AND P.R.

**V. [sic] ARGUMENTS**

**ERROR A**

THE HONORABLE COURT ERRED WHEN IT RETROACTIVELY IMPOSED DISSEMINATION REQUIREMENTS ON THE RESPONDENT'S WRITTEN COMMERCIAL COMMUNICATION IN VIOLATION OF HIS RIGHT TO "DUE NOTICE" GUARANTEED BY THE CONSTITUTIONAL CLAUSES OF THE U.S.A. AND P.R. ABOUT THE DUE PROCESS OF LAW.

The issue is simple. Nowhere does Rule 35 of Professional Ethics mention advertisements, deceptive or not. Neither does it regulate solicitation by lawyers. This arises clearly from a reading of the same.

Through the judgment in this case the Honorable Court interprets that said Rule requires that when a lawyer advertises himself or herself or solicits employment, he/she must include certain disclosures in his/her written communications. Specifically, the opinion states, he/she must warn the potential client that he/she (the client) can carry out the action on his/her own and must also inform precisely the source of the funds to be claimed (pages 12 through 14 of [the Spanish version of] the opinion. On this point two errors are made.

In that regard the Supreme Court of the United States said in the case of ***Zauderer***:

> "The vagueness of the Ohio Supreme Court's opinion regarding precisely what an attorney must disclose in an advertisement mentioning a contingent fee is, however, unfortunate. It is also worth noting that DR 2-101 (B) (15), the only explicit reference in the Ohio rules to a

> disclosure requirement involving contingent fees, does not on its face require any disclosures except when an advertisement mentions contingent-fee rates – which appellant's advertisement did not do. Because '[a] relevant inquiry in appraising a decision to disbar is whether the attorney stricken from the rolls can be deemed to have been *on notice* that the courts would condemn the conduct for which he was removed,' *In re Ruffalo*, 390 U.S. 544, 554, 88 S.Ct. 1222, 1228, 20 L.Ed. 2d 117 (1968) (WHITE, J., concurring in result), it may well be that for *Ohio actually to disbar an attorney on the basis of its disclosure requirements as they have been worked out to this point would raise significant due process concerns.* Given the reasonableness of the decision that appellant's omissions created the potential for deception of the public, however, we see no infirmity in a decision to issue a public reprimand on the basis of those omissions. And, of course, *were Ohio to articulate its disclosure rules regarding contingent fees in such a way that they provided a sure guide to the advertising attorney,* neither the Due Process Clause nor the First Amendment would preclude disbarment as a penalty for the violation of those rules." *Zauderer v. Office of Disciplinary Counsel*, 105 S.Ct. 2265, 2283 N. 15 (1985). (Emphasis ours).

The cited expression is very clear. The first sentence of the cite refers to the issue of ambiguity, a problem both of due process and of freedom of speech. We address that issue as Error B.

The rest of the cite refers to the issue of "due notice." The Federal Supreme Court points out that lacking such

element of due process, the Ohio court could not suspend **Zauderer**. It could, at most, reprimand him.

From the viewpoint of federal law, a critical distinction that this Honorable Court overlooked is the one that with greatest precision was established by the Supreme Court of the United States in the cited case. That critical distinction is between laws or rules that prohibit expression and those that affirmatively require expression. Nowak & Rotunda, ***Constitutional Law***, 4th. Ed. § 16.31, page 1025.

**a. The *Zauderer* Distinction**

The Honorable Court will note that the respondent was not sanctioned because he expressed himself in a certain manner or because he said something. *He was* ***sanctioned*** *because he did not say something or did not express himself in the manner that the Court deemed he should have done so.* The fault did not consist of his soliciting or advertising. The fault consisted in his not clarifying in his advertisement that the action could be carried out *pro se* and in not informing the source of the funds to be claimed.

It is one thing whether these disclosure requirements are reasonable or not and that they comply with the Constitution or not. (Error B). It is a different thing to require a lawyer to comply with an obligation to disclose, which obligation was non-existent at the time when he expressed himself; that he comply with a rule that demands that he communicate an idea although the rule was approved after-the-facts. **It is a suspension without**

**due notice.** There existed no rule notifying the respondent what he had to do. What is even worse, neither was there a charge [brought against him] that would notify him. The result was to punish him with the retroactive effect of the rule.

The point brought forth by the Federal Supreme Court in ***Zauderer*** refers to an issue of the due process of law that is as ancient as the operational of said constitutional clause. Indeed, it can be said that it is even more ancient than the due process clause itself, because it was the central element of the protection afforded by the British *Magna Carta* with the clause of "by the law of the land," the forerunner of the "due process of law." The concept of a written law, approved and in force prior to the facts, in regards to which law a responsibility is imposed on a person, probably constitutes the very essence of the due process of law. It certainly goes to the very gist of the concept of "fair play" guaranteed by the Constitution in adjudicative proceedings. ***In re Ruffalo***, 390 US 544 (1968), ***In re Finkelstein***, 901 F.2d. 560 (11th. Cir., 1990).

The Constitution abhors retroactivity.[1] The clause of due process of law constitutes the Constitution's general

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[1] The clause on *ex-post facto* laws forbids retroactivity in the field of penal law. ***Ex parte Garland***, 71 US (4 Wall) 333 (1866); ***Harrisciades v. Shaghnessy***, 342 US 580 (1952); ***People v. Pérez-Méndez***, 83 DPR 539 (1961). The clause on impairment of contractual obligations does virtually the same in the context of obligations and contracts. ***Allied v. Spannaus***, 438 US 234 (1978); ***Warner Lambert v. Superior Court***, 101 DPR 378 (1973), including those of the government, ***Fletcher v. Peck***, 6 Cranch 87 (1810); ***Cf. Bayrón-Toro v. Serra***, 119 DPR 605 (1987). Condemnatory laws, closely linked to freedom of expression, are also

prohibition of retroactive laws applicable in any context not covered under one of the more specific clauses. ***NRPC v. Atchinson***, 470 US 451 (1985); ***Bouie v. Columbia***, 378 US 347, 353 (1964); ***Marks v. U.S.***, 430 US 188 (1977); ***Lynch v. U.S.***, 292 US 571 (1934); and see ***Santiago-Girona v. Court***, 118 DPR 1 (1988); **cf. Retroactive application of federal legislation as violating due process clause . . . Supreme Court cases**, 107 L.Ed.2d. 1105.

Ordinarily, all judicial adjudications entail an element of retroactivity. This results from the fact that the Court's interpretation is applicable to the facts of the case, that is, to events that antedated the adjudication. This retroactivity is inevitable in the ordinary course of judicial endeavors. Nevertheless, the instant case is not a case resolved in the ordinary course of judicial endeavors. The instant case constitutes an exercise of the Honorable Court's power to regulate the profession. The rule that the aforesaid information must be disclosed exists only after ***In re Franco-Rivera and Masini-Soler***; it did not exist prior to this case. In this case the Court regulated and adjudged.[2]

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forbidden by the Constitution. ***Cummings v. Missouri***, 71 US (4 Wall) 277 (1866); **Nowak, supra**, § 16.44, page 1079.

[2] Under even more extreme circumstances, which do not even involve its faculty to regulate, this Court has shown utmost sensitivity to the retroactivity issue involved herein. Thus, in ***People v. Bou***, 111 DPR 179 (1981), even at the risk of issuing a purely advisory opinion, the Court refused to recognize a violation of the constitutional right of the convict-appellant (to receive a copy of the presentence report). The Court did so in order to allow the political branches an opportunity to establish the mechanism of law to implement what it understood that the Constitution required. Also see ***Agosto v. Javierre***, 77 DPR 471 (1954) and ***Irizarry v. Rivera***, 56 DPR 519 (1940).

**b. Cases of Professional Ethics**

If the retroactive operation of the Constitution is halted for the political branches to comply with the "new" rule, it becomes difficult to justify not to impose the retroactive operation of a new rule merely to afford lawyers an opportunity to learn about the same and comply with it.

Indeed, whenever this Court has recently decreed new rules for attorneys-at-law and notaries, a purely prospective effectiveness has been accorded to the norm. It has so done, for example, even when it has determined that a conflict of interest has been incurred, a practice expressly prohibited by Rule 21. ***In re Colón-Ramery***, 93 JTS 91. Also see ***In re Delgado***, 88 JTS 36, decreeing that the standard established in 88 JTS 16 pertaining to payments of mortgage obligations that are recorded in a deed will only have prospective effectiveness.

In the worst of cases, the "sanction" against the respondent herein should not have exceded an admonition about future advertisements or collection of fees. See ***Zauderer***, *supra*. A mere admonition not to repeat a conduct whenever the same is neither unlawful nor immoral; when any other person who is not an attorney could have carried it out; whenever persons can very reasonably disagree about the flaws and good points of the action Zand with the judgment of the Court; the mere admonition in that context would of itself have been a punishment.[3] In contrast, the respondent was **suspended** for a

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[3] *Quaere* as to the status of the principle that stipulates that disciplinary sanctions against lawyers are measures to protect

fault that did not exist at the time of the facts. **The error was double: first by sanctioning and then by suspending him.**

We are not faced with a situation of rash or contemptuous conduct; of open violation of a clear and precise norm contained in a regulation nor of a repeated violation; neither is this a second-offender respondent, of delinquent conduct, of acts of moral depravation nor of scandalous conduct. There are no victims nor persons harmed by the lawyer's conduct. This does not have to do with a respondent who disregards a grievance or disciplinary procedures. As soon as his activity generated a grievance, which was not even presented by a client but instead by the lawyer for a bank, the respondent ceased his operations that gave rise to the grievance.[4]

Should the Honorable Court understand that, in spite of the issues raised in the discussion of "Error B," it will sustain the norm set in the instant case, the only manner to comply with the due process of law, the obligation of

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the public. In the case at bar, the only complainant was an attorney for a bank with unclaimed deposits. Contrary to an inference derived from a mere allegation, Mr. Carmelo Martínez-Figueroa was neither a victim nor did he complain about the "advertisement" or the solicitation. In fact, Mr. Martínez, a blind person, is unable to read the lists of inactive deposits that are published only in the written press.

[4] We are perturbed by the different conclusion arrived at by the Court when it expresses (page 4 of the [Spanish version of the] Opinion), without a scintilla of evidence, that [the respondent] did not comply with what he had told Atty. Herrero and that he continued with the practice objected to. The respondent requested payment of reduced fees precisely because he discontinued the claims.

prior notice and the prohibition against retroactivity, is to do as it has done in other similar cases of professional responsibility. In the case at bar there is no concurrence of demanding circumstances that deserve a departure from the basic norm of justice that forbids retroactive punishment. In addition to suspending the respondent instead of only reprimanding him, the error committed is aggravated.

B. THE HONORABLE COURT ERRED WHEN IT DECREED AN EXCESSIVELY AMBIGUOUS RULE AND WITH UNREASONABLE DISSEMINATION REQUIREMENTS IN VIOLATION OF THE RESPONDENT'S RIGHT TO FREEDOM OF SPEECH GUARANTEED BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE U.S.A. AND BY ARTICLE II, SECTION 4 OF THE CONSTITUTION OF P.R.

Even if it were to be applied prospectively, the rule on disclosure requirements contained in the Opinion is unconstitutional.

The rule that is deduced from the Opinion is not a reasonable rule that in a specific manner informs lawyers about the nature and the scope of their obligations or limitations whenever they advertise. It is an excessively ambiguous rule that has a clear inhibitory effect on protected speech. The rule is excessively ambiguous and unreasonable because in reality it does not constitute a rule on lawyers' advertisements It is an *ad hoc* normative elaboration whereby an attempt is made to supplement a perceived regulatory deficiency.

**a) Ambiguity, Unreasonableness and Freedom of Speech.**

The aforesaid rule governs an aspect of lawyers' advertisements as though it were any other matter subject to the state's regulatory powers. As has well been pointed out by this Court, it is not the same to legislate about weapons, drugs and foodstuffs as to regulate speech. ***People v. Santos-Vega***, 115 DPR 818, 821 (1984). It must be remembered that lawyers' advertisements constitute commercial expressions protected by the Constitution (***Bates v. State Bar***, 433 US 350 (1977) wherefore regulation of the same must comply with certain constitutional requirements that are not applicable in other contexts. I.e., ***Central Hudson v. Public Service Comm.***, 447 US 557, 563 (1980), applied in ***In re R.M.J.***, 455 US 191 (1982) and in ***Zauderer***, *supra*. Also see ***In re Primus***, 436 US 412 (1978).

Of course, commercial expression (by lawyers) does not enjoy the same degree of constitutional protection as ideologocal, political or religious expression. ***Posadas de P.R. v. Tourism Co.***, 478 US 328 (1986); ***Ohralik v. Ohio State Bar***, 436 US 477 (1978). This does not mean that it is laid back to the level of vehicular traffic, of alcoholic beverages, of optical services, of recreation and other matters that do not enjoy constitutional protection. *Cf.* ***People v. Superior Court***, 81 DPR 763 (1960) and ***People v. Hernández***, 118 DPR 891 (1987). Specifically, although lawyers' commercial expressions do not have the protection of the doctrine on over-reaching (***Ohralik v. State Bar***, *supra*), they do have the protection of the rule on

ambiguity. ***Zauderer v. Office***, *supra*; ***In re Guzmán-Géigel***, 113 DPR 122, 129 (1982).

In relation to the disclosure requirements in the commercial expressions of lawyers, it is clear that the state possesses a wider regulatory authority than what it has in regards to other forms of expression. This wider authority is not equivalent to an absolute power: "[T]he State does not have *carte blanche* to impose unreasonable disclosure requirements." ***Nowak***, *supra*, p. 1026; also see ***In re Primus*** and ***In re R.M.J.***, *supra*, on substantial interest and reasonableness, respectively.

Each and everyone of the states that have approved rules about disclosures and clarifications have proceeded in the only reasonable manner to communicate the sense and the scope of the professional obligation. Such manner consists of specifying, in the text itself of the rule, the expression or the message that must be included in the advertisement. The A.B.A. has also incorporated into its "Model Rules" norms about "disclosures" and "disclaimers" in such a manner. It is therein set forth, for example, that when soliciting by mail the material must be identified in a prominent place with the wording "Advertising Material" (Rule 76.3). On the other hand, rules have also been validated that specify the message to be included or excluded, such as it pertains to the lawyer's specialties (***Peel v. Attorney R & D Comm.***, 110 S.Ct. 2281 (1980); that the services to be rendered may entail payment of the costs of the litigation (***Zauderer***, *supra*); prohibiting references to the quality of the service (***In re R.M.J.***, *supra*, 455 US ___, p. 201; or clarifying that the contents of the document constitute an advertisement. (***Leoni v. State Bar***, 704 P.2d. 183 (Cal. 1985); appeal

dismissed, 475 US 1001 (1986). Also see, in general, ABA/BNA **Lawyers' Manual on Professional Conduct**, Chap. 81.[5]

The contrast between the rule at bar and those aforementioned is marked. According to the implicit reasoning, by utilizing Rule 35 in the instant case, the Rules of Ethics would be totally redundant. It would suffice with one single rule, to the effects that **"lawyers will observe a correct conduct"** to govern on this matter. The Honorable Court will note that there would be no difference whatsoever in sustaining that a hypothetical rule such as the one alluded to prohibits deceptive advertisements by lawyers and sustaining that rule 35 prohibits the same. This applies equally to predicting as to whatever a lawyer has the obligation to disclose.

The rule at bar is so ambiguous that one can not know exactly what is the rule, or even if there is any. From the Opinion it can not be determined whether it has to do with a rule of general aplicability or one that applies only to the forwarding of a document exactly like the one forwarded with a purpose identical to the one in the instant case. In any context other than the one in the instant case, that is, that does not involve an inactive account, a lawyer can not know what is the extent of his/her obligation to explain the nature of the actions to be carried out nor the orientation to the client about efforts

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[5] In fact, for lawyers to be clear as to how to solicit and advertise themselves, at least one State Supreme Court (Florida) ordered the writing of a manual in tune with the rules approved in that regard with interpretations, discussion, examples, etc., which can be obtained through the Bar.

*pro se*. Aside from notarial work, his/her client must be able to perform virtually any action performed by the lawyer.

As is known, the doctrine on ambiguity has two variants: the one on the due process of law, ***Vives-Vázquez v. Superior Court***, 101 DPR 139 (1973); ***People v. Montilla***, 71 DPR 36 (1950); and the one on freedom of speech, ***Smith v. Goguen***, 415 US 566 (1974); ***Pacheco v. Cintrón***, 88 JTS 104. Through the variant of the due process a concrete sense is given to the element of "due notice" or prior warning guaranteed by that clause of the Constitution. ***Grayned v. City of Rockford***, 408 US 104 (1972). Of the two variants, this is the one that least restricts the exercise of the sovereign power of the State.

Contrary to the foregoing, the variant on ambiguity related to freedom of speech can not be catalogued as "last resort argument." Far from that, it constitutes, together with the related doctrine on over-reaching, the method *par excellence* to avoid the "chilling effect" or the inhibitory effect of the law on freedom of speech. **Nowak**, *supra*, § 16.8, p. 944.

If one thing is clear, it is that the Constitution is not limited to protecting speech or expression. The Constitution foments, promotes, stimulates the development of free speech and therefor it imposes affirmative obligations on the State, different from what happens with other individual constitutional rights or interests. The purpose of this is to avoid the "chilling effect." There is **less tolerance for ambiguity** when it has to do with freedom of speech and the Rule at issue does not even

comply with the lesser demanding requirements of the due process of law.

**b) Rule 35 vs. Rule 36.**

The main source of confusion and ambiguity is that the Rule at bar was adopted via interpretation of Rule 35 and not as an interpretation of Rule 36 or as an amendment to the Rules in general. Aside from the retroactivity problems (Error A), inasmuch as it is based on the cryptic text of Rule 35, the Rule does not give any indication as to the conduct being prohibited. On the contrary, the Rule provides quite a different indication as to the type of conduct for which regulation is being sought. All of this has the unavoidable result of reflecting an unconstitutional hostility towards advertisements and solicitation by lawyers in Puerto Rico.

The mandatory question that arises is: Why is it Rule 35 and not Rule 36? In the exercise of its inherent powers, this Court adopted Rule 36 specifically to regulate lawyers' advertisements and other expressive conduct. Said Rule prohibits, *inter alia*, "false, fraudulent or deceitful expressions or information . . . " (Rule 36 (b) (4)).

Different from Rule 36, Rule 35 does not have the **purpose** of suppressing expression; it does not even refer to any mode of expression whatsoever (i.e., defamation, deceitful advertisements or any other). The obvious purpose of Rule 35 is to regulate conduct in general. It is only within the scope of indirect **effects** that Rule 35 finds applications that affect lawyers' expressions. (See, e.g., ***In re Rivera-Colón***, 81 DPR 617 (1959) (false allegations); ***In***

*re Avila*, 109 DPR 440 (1980) (incitement to illegal conduct); ***In re Ramos***, 115 DPR 409 (1984) (false information).

It is reasonable to assume that Rule 36 was not utilized due to its serious constitutional deficiencies. Serrano-Geyls, R., ***Constitutional Law of the U.S.A. and P.R.***, Vol. II, page 1440 (1988). Even though this Honorable Court has not expressed itself in that regard, we know that Rule 36 in general terms will not withstand the most superficial constitutional attack in light of the jurisprudence of the U.S. Supreme Court under the First Amendment to the Federal Constitution.

This premise having been established, without there being any glimpse of a possibility of another, the application of Rule 35 results even more dramatic in the instant case. The Court, which undoubtedly has the power to be able to regulate advertisements ***as long as there is compliance with the Constitution***, approves a rule that does not comply (Rule 36) and then, instead of amending or interpreting that rule, adjudges a case before it under a rule other than the one approved for it.

Rule 35 has nothing to do with and can not be applied to the context of deceitful or deceptive advertisements without seriously compromising freedom of speech and, therefore, the due process of law. Advertisements, which are part of commercial speech protected by the Constitution, can only be regulated by norms written "with narrow specificity" for the purpose of regulating that kind of expression. Otherwise there would be no sense to the constitutional protection because the first step of any analysis can not be taken until after the

instant case has been resolved by this Court of the ultimate hierarchy. These analytical processes are fundamentally different when evaluating rules to regulate speech or expression than when evaluating rules with mere effects on speech or expression.

In synthesis, Rule 35 is not an anti-expression rule. It is a rule about conduct in general, which can have (and in fact has and has had) a limiting **effect** on speech or expression. When a rule of this type affects freedom of speech, the analysis for passing judgment begins with the premise of presumption of validity and then comes the application of a reasoning of balance of the kind of ***US v. O'Brien***, 391 US 367 (1978). See ***Saia v. New York***, 334 US 558 (1948); ***Kovacs v. Cooper***, 336 US 77 (1949) and ***People v. Hernández***, *supra*.

Rule 36 **is** an anti-expression rule. In addition to having the **effect**, it has the **purpose** or objective of suppressing expressions (certain advertisements). It can have no other effect but to limit expression. When a rule of this other type affects freedom of speech, one **DOES NOT** stem from the same premise nor does apply the same analytical reasoning as aforesaid. Laws such as Rule 36 reach the courts with a virtual presumption of invalidity and then they have to overcome the imposing constitutional hurdle of "a pressing State interest." See ***R.A.V. v. City of St. Paul***, 112 S. Ct. 2358 (1992); ***N.Y. Times v. Sullivan***, 376 US 254 (1964); ***Police Dept. v. Mosley***, 408 US 92, 95 (1972); ***People v. Santos Vega***, *supra*; ***Rodríguez v. Secretary***, 109 DPR 251, 256 (1979).

The Constitution does not permit achieving through a rule of the type of "Rule 35" what can only be achieved

through one of the type of "Rule 36" but without compliance with the constitutional burden inherent to laws of the type of Rule 36.[6] Were it that simple, the State would suppress manifestations, pickets and press editorials with one single law to the effects that "people will behave well." Such an inhibitory effect is unconceivable under our constitutional scheme of freedom of speech. On the distinction of laws *supra*, see Nimmer, M.B., ***Freedom of Speech*** (Matthew Bender, 1984), § 2.04; Tribe, L., ***American Constitutional Law***, (F. Press, 1991, § 12-2 *et seq*. On laws that appear to be of one type when in reality they are of another, see ***Police Dept. v. Mosley***, *supra*.

C. TO SUSPEND THE RESPONDENT WITHOUT PRIOR FILING OF CHARGES, WITHOUT FIRST HOLDING A HEARING, THROUGH DETERMINATIONS THAT ARE NOT SUPPORTED BY THE RECORD OF THE CASE AND WITHOUT A REAL OPPORTUNITY FOR THE RESPONDENT TO DEFEND HIMSELF FROM THE CHARGE OBJECT OF THE SANCTION, ALL OF WHICH VIOLATES THE RESPONDENT'S RIGHT TO A DUE PROCESS OF LAW UNDER THE CONSTITUTIONS OF THE U.S.A. AND P.R.

Even assuming that Rule 35 could be constitutionally applied to proscribe deceptive advertisements and overlooking for the moment the other constitutional problems of interposing pursuant to it *ad hoc* obligations of notices and warnings and of suspending for noncompliance with the same, any determination that said rule was violated

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[6] A similar issue was brought forth by another respondent before this Forum. See **"Comments by Atty. Carlos M. Rivera,"** page 19, in case no. AB-87-33.

would have to be based on the record. In the case at bar, there is no such basis. In the case at bar, not even one hearing was held nor were there charges filed against the respondents.

It must be remembered that in the type of case at hand this Court's responsibility to assure an adequate record becomes greater. In these proceedings there is no trial court.

The respondent in this case was charged with having solicited clients in violation of Rules 34 and 36 of Professional Conduct. The respondent defended himself from said charge alleging that his conduct was protected by the Constitutions of the U.S.A. and of P.R. He was never charged with having collected unreasonable fees and therefore he never defended himself from that. Even more disquieting are the findings of fact reached by the Court without the benefit of an evidentiary hearing. It concludes that the action was easy, the fees unreasonable, and others. (See pages 4, 13 and 14 of the [Spanish language version] of the Opinion and footnotes 3 and 4, *supra*).

The foregoing constitutes another serious error because it also violates the respondent's right to a due process of law. It was so specifically resolved by the Supreme Court of the U.S. in relation to the "due process" of the Federal Constitution in cases of disciplining lawyers, ***In re Ruffalo***, 390 US 544 (1968):

> " . . . The charge must be known before the proceedings commence . . . This absence of fair notice as to . . . the precise nature of the charges deprived petitioner of procedural due process."

The ruling in ***Ruffalo*** for lawyers was already a constitutional routine for this Court and for the Federal Supreme Court in other contexts. In the two hundred years of refinement of the federal "due process" and almost a half a century of the due process of the Commonwealth of P.R., certain aspects of the adjudicative process have prevailed as fundamental elements of the aforesaid guarantee. They are so because of their importance in achieving "a fair and equitative process." ***Rodríguez & Co. v. Stowell***, 93 JTS 111. Among those fundamental elements, none is better rooted in our notion of a fair trial than the evidentiary hearing of an adversary nature, prior notice and the prospective application of the law.

Nothing better to combat prejudice and to avoid arbitrariness than to resolve the facts within the context of an adversary hearing. The most incriminating document and the most adverse sworn statement may be effectively refuted when the other party is heard and is allowed to present its proof. Even a prejudiced trier can be persuaded that the reality was not the one that he "determined" in his mind.[7]

On the other hand, there is nothing "fairer and more equitable" than to warn a person beforehand about the type of conduct for which he/she may be punished or sanctioned. A retroactive penalty, absolutely banned under penal law, does not cease to be a negative value in the other fields of law. (See *supra*).

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[7] J. Thibaut, L. Walker, E.A. Lind, ***Adversary Presentation and Bias in Legal Decisionmaking***, 86 Harv. L. Rev., cited in ***Law and Behavioral Sciences***, 2d. Ed., Bobbs-Merrill (1977).

It must be remembered that suspension or disbarment entail the most terrible implications for a lawyer's professional life. On the one hand, he/she is deprived of the means that he/she knows of earning a living and supporting his/her family. On the other hand, he/she is permanently deprived of prestige and credibility in his/her community. It should not be necessary to qualify a separation from the profession as a corrective and not as a punitive measure when the deafening reality is that few punishments can be equaled to it in terms of economic and psychological devastation.

That is why in ***Ruffalo*** the Court described these proceedings as being of a quasi-criminal nature. This is equivalent to saying that almost all guarantees of the due process – both the fundamental and the nonessential ones – are activated in this type of cases. Although said Court has not had an occasion to express itself about each element in particular, the message is clear: the result of the balance of ***Matthews v. Elridge***, 424 US 319 (1976) applied to cases of suspension or disbarment of lawyers will have to approximate "due process" in penal cases wherein all of the guarantees operate, and not to the basic administrative "due process" of cases without proprietary interests or of freedom. To those effects, see the article by Prof. Wilburn Brewer, Jr., ***"Due Process in Lawyer Disciplinary Cases: From the Cradle to the Grave,"*** 42 S.C.L. Rev. 925 (1991). Also see ***Nowak***, *supra*, §§ 13.7 and 13.8; and ***Tribe***, *supra*, § 10-7.

Had there been an opportunity to present evidence and to argue the issue resolved, the record of this case would have reflected a picture quite different from the

one inferred by the Honorable Court from the mere examination of two documents and one report.

The respondent has not had a real opportunity to defend himself. He was adjudged guilty in a trial by reports. His conduct was tried and conclusions of fact were formulated without an evidentiary hearing. He was sanctioned on the basis of an ambiguous and unreasonable rule, the contours of which can not as yet be deducted and that, furthermore, was adopted after the facts object of the case.

**Conclusion**

The effect of the decision at bar is devastating for the respondent because the justice to which he is entitled under the Constitutions of the U.S.A. and of P.R. was not afforded to him. Nevertheless, the decision is even more ill-fated in terms of the dangerous precedent that it sets for freedom of speech and the due process of law of lawyers and attorneys and of all Puerto Ricans.

**WHEREFORE,** it is very respectfully requested of this Honorable Court that it reconsider the judgment issued in the instant case, if necessary allowing new argumentation in-depth of the important constitutional controversies herein involved.

**RESPECTFULLY SUBMITTED,** in San Juan, Puerto Rico, on this 26th day of January 1994.

**I CERTIFY:** That on this date I have forwarded a copy of this document to the Solicitor General, Department of Justice, P.O. Box 192, San Juan, Puerto Rico 00902.

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**- CERTIFIED -**

To be a correct translation prepared by:

/s/ Ernesto Quidgley - 5-4-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

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## APPENDIX Q

CERTIFIED TRANSLATION:

IN THE SUPREME COURT OF PUERTO RICO

| | |
|---|---|
| IN RE: ATTORNEYS ) | NO.: AB-92-24 |
| JOSE R. FRANCO-RIVERA ) | (Stamped): |
| AND ) | FILED |
| JUAN M. MASINI-SOLER ) | CLERK'S OFFICE |
| ) | SUPREME COURT OF |
| | PUERTO RICO |
| | '94 FEB 22 A9:17 |

(Stamped):
DEPARTMENT OF JUSTICE
SOLICITOR GENERAL'S OFFICE
RECEIVED
'94 FEB 22 AM 9:24

**URGENT MOTION IN PETITION OF:**
**I) PERMISSION TO FILE A THIRD AND LAST RECONSIDERATION**
**OR IN THE ALTERNATIVE**
**II) RETENTION OF THE MANDATE ON *CERTIORARI* TO THE FEDERAL SUPREME COURT**

TO THE HONORABLE COURT:

Comes now attorney Juan M. Masini-Soler, *pro se*, and very respectfully STATES, ALLEGES and PRAYS:

1. Dated as of 16 February 1994, through a Resolution notified on the 17th of the same month, this Honorable Court DENIED the Second Motion on Reconsideration subscribed by the undersigned, through his legal counsel, on 27 January 1994.

## I) PERMISSION TO FILE A THIRD AND LAST RECONSIDERATION

2. In the aforesaid Resolution the undersigned was instructed to abide by what had been resolved. Nevertheless, we are moved to request permission to file a Third and Last Motion for Reconsideration because of the fact that in the aforesaid Resolution this Honorable Court made rulings in addition to those of the Opinion of 10 December 1993. Furthermore, and more importantly for the effects of this petition for permission to file our Third and Last Reconsideration, it is that the same is addressed only and exclusively to a reconsideration of the scope and/or severity of the sanction imposed; that is, the separation from the exercise of the practice of law for a term of six months.

3. Should this Honorable Court decide to grant this permission, it is requested that the "Third and Last Motion for Reconsideration" filed together with this Motion be accepted as filed. On the contrary, if the determination of this High Forum is not to grant said permission, we respectfully request that it deem said "Third and Last Motion for Reconsideration" as not received and that in the alternative it consider the following petition on the retention of this mandate.

## II) RETENTION OF THE MANDATE ON *CERTIORARI* TO THE FEDERAL SUPREME COURT

4. The petitioner is interested in presenting a Petition on *Certiorari* before the Supreme Court of the United States in order to review the Judgment entered by this Honorable Court and intends to present in said recourse the matters of a federal nature that were argumented in our first and second motions on reconsideration, particularly in regards to the protections of the First, Fifth and Twenty-Fourth Amendments to the Constitution of the United States.

5. In consideration of the foregoing, the petitioner is interested in having the mandate retained or stayed for a reasonable term, no less than 90 days, to allow him for the translation that he will utilize and the presentation of the Petition on *Certiorari*.

WHEREFORE, on the merits of the foregoing it is prayed of this Honorable Court that it grant permission to file the "Third and Last Motion for Reconsideration" that has been filed together with this Motion or, in the alternative, that it retain or stay the mandate in the instant case for a term of no less than 90 days or until a final disposition is issued on the recourse on *Certiorari*, once the filing of the same is accredited through the presentation of the corresponding notice from the Clerk of the Supreme Court of the United States.

I CERTIFY: That on this date I have forwarded a copy of this document to the Solicitor General, Department of Justice, P.O. Box 192, San Juan, Puerto Rico 00902.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on 22 February 1994.

/Sgd/ Juan M. Masini Soler
ATTY. JUAN M. MASINI-SOLER
PENTHOUSE 1, ESQUIRE BLDG.
HATO REY, P.R. 00918-3622
TEL. 751-0447

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- CERTIFIED -
To be a correct translation prepared by:
/s/ Ernesto Quidgley - 4-22-94
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## APPENDIX R

CERTIFIED TRANSLATION:

**IN THE SUPREME COURT OF PUERTO RICO**

| | | |
|---|---|---|
| **IN RE:** | ) | **(Stamped):** |
| **ATTYS.** | ) | **DEPARTMENT OF** |
| **JOSE R. FRANCO-RIVERA** | ) | **JUSTICE SOLICITOR** |
| **AND** | ) | **GENERAL'S OFC.** |
| **JUAN M. MASINI-SOLER** | ) | **RECEIVED** |
| | ) | **'94 FEB 22 AM 9:23** |

NO.: AB-92-24
(Stamped):
FILED
CLERK'S OFFICE
SUPREME COURT
'94 FEB 22 A9:17

### THIRD AND LAST MOTION ON RECONSIDERATION

TO THE HONORABLE COURT:

Comes now attorney Juan M. Masini-Soler, *pro se*, and very respectfully STATES, ALLEGES and PRAYS:

1. In the instant case the movant herein filed a Motion on Reconsideration on 28 December 1993 which was decreed DENIED through an Order noticed on 24 January 1994. On the 27th of that same month a Second Motion on Reconsideration was filed with the same result in accordance with the Order noticed on 17 February 1994. The aforesaid motions, filed through counsel, are

incorporated hereto by reference and are made part hereof for all pertinent legal purposes.

2. Nevertheless, the main and basic purpose of this Third Motion on Reconsideration is to appear on the record personally in order to request from this Honorable Authority only the reconsideration of the severity of the sanction imposed, that is, *my separation from the practice of law for a term of six months*, on the extenuating and mitigating grounds that are discussed and expanded hereinbelow. To those effects, and with the greatest respect, I will refer to cetain specific situations of *fact*, discussed in the Opinion of 10 December 1993 ("the Opinion") and in the Resolution of 16 February 1994 ("the Resolution"), as well as to background matters tangential to the same.

3. I am a product of the evening session of the Law Schools of the Catholic University of Puerto Rico and of the Interamerican University. I studied while holding full-time employment during the day. I began my law studies at the Catholic University in 1980 and completed the same, *Cum Laude*, at the Interamerican University in December 1984. I took and passed the Bar Examination in March 1985 and took my oath before this Illustrious Forum on 26 June 1985. It was not until September 1990 that I began my active practice of the profession because prior to that date I was performing administrative duties in the public service.

4. I deemed it necessary to make this brief introduction so that this Honorable Court may appreciate that at the time that the banks, Santander Puerto Rico and Santander federal Savings, through Atty. Ismael H. Herrero,

Jr., of the Law Offices of González Oliver, Correa-Calzada, Collazo-Salazar, Herrero & Jiménez, subscribed their administrative complaint against the undersigned attorney, on 4 November 1991, for "[P]ossible violations of Rules 34 and 36G of Professional Ethics," I had barely been in the private practice of law for 13 months. In fact, I began the actions object of attorney Herrero's administrative complaint when I had approximately eight (8) month's experience in the exercise of the profession.

5. Since my first communication to the Office of the Solicitor General on 27 February 1992, after having been notified (in general terms) on 18 February 1992 by said Office about attorney Herrero's administrative complaint, I have offered my most sincere apologies for any inconvenience that, inadvertently and acting in good faith, I may have caused. I say inadvertently and in good faith because I have never been motivated by any intention of causing harm to anyone. Probably because of my lack of experience in the private practice of the profession I did not approach this matter adequately.

6. I thought that I was offering a lawful service to persons who, for one reason or another, did not have any knowledge that they had certain funds in those banks and that if they did not claim the same, [those funds] would be transferred to the State Treasury wherefrom the opportunity to recover them would be markedly and considerably reduced. In my Rejoinder to the Solicitor General's (Second) Report (hereinafter "the Rejoinder"), Exhibit 2 included a communication from the Office of the Commissioner of Financial Institutions showing the millions of dollars (more than 2 1/3 million in 1990) that

every year increase the State Treasury because of the unclaimed funds, in spite of the banks' notices.

7. My idea was to offer a service to whom freely and voluntarily wanted to retain me and to collect what in my months of experience in the profession I had heard was the regularly agreed upon percentage of contingency fees (except pertaining to minors). Really, at that time, June-July 1991, when I started to shape the action on the claims, I had very little experience with contingency fees because the immense majority of the clients that I had were on an hourly billing basis.

8. On the other hand, it is important for me to emphasize that every person who retained my services received his/her money in accordance with the contract for professional services. I understand that there exists not even one single complaint in regards to my having kept anybody's money or even further, that I delayed in my forwarding the funds to the clients. In this sense I was especially punctilious, sincere and honest. Each client's claim was remitted quickly and with itemized details.

9. As a representative sample, attached hereto as **Exhibit 1** is the letter of liquidation in the case of attorney Juan J. Gueits,[1] of Ponce, dated 28 October 1991. As can be noted, said liquidation shows the amount claimed vs. the amount received and *the depository of the funds is identified* and whether the latter applied an administrative charge (as permitted by law). It must be noted that the

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[1] Previously mentioned in my Rejoinder at the end of paragraph 10, pages 11-12 [of the English translation] and in Exhibit 4b.

fees were computed from the amount received from the depository and not from the amount claimed. We frankly understand that this is a relatively simple and easy to understand liquidation document. As I stated, it was not my intention to deceive anyone.

10. In this action on Claim for Funds I used as a model a document that had been previously used by Atty. José R. Franco-Rivera and, to the best of my understanding and knowledge, by others prior to him and that had been accepted by the banks in earlier years. As I have stated before, I did not have (nor do I have) any professional relationship whatsoever with attorney Franco-Rivera and I did not know about the existence of Civil Cases KAC 90-1868 (1003) and KAC 90-2010 before the Superior Court, San Juan Section, and mentioned by attorney Herrero in his letter-complaint of 4 November 1991, Solicitor General's (First) Report of 6 March 1992, in Annex 1, pages 1-2 [of the Spanish version; pages 1-4 of the English translation], (hereinafter "the First Report"). I simply used a form that I understood was in the public domain and acceptable by the institutions to which the claim was to be submitted. There was no intention of lack of sincerity and honesty.

11. In its Opinion of 10 December 1993, on page 4 [of the Spanish version], this Honorable Court discusses my communication with attorney Herrero (and recorded in my letter to him of 15 November 1991, First Report, on Annexes VI and VII, pages 11 and 12 [of the Spanish version; pages 23 through 26 of the English translation] and it concludes that I acted differently from what had been agreed upon with attorney Herrero. I want to explain that what I informed the complainant, both over

the telephone and in writing, was that since the Santander refused to honor the Claim Under Notarial Oath, I would cease the practice of submitting the claim to the Bank. That I would so inform my clients to submit the claim directly. I never discussed with attorney Herrero anything related to the fees between myself and the claimants. In fact, in his letter to the Solicitor General of 5 March 1992 (Annex I to my Motion filed on 18 March 1992) attorney Herrero confirms our telephone conversation and acknowledges that I " . . . had desisted from [my] efforts to require from [his] client, Banco Santander Puerto Rico, the payments of sums from inactive accounts of depositors of the Bank and that [I] had so informed said depositors." In fact, I did so.

12. As a chronological parenthesis, I would like to point out a series of events related to attorney Herrero, Banco Santander and the undersigned attorney. Dated as of 5 November 1991, attorney Herrero writes to me in regards to the Claim of Mrs. Miguelina Muñoz-Trinidad, **Exhibit 2**. As can be seen, in said letter reference is made to my document on Claim for Funds and I am informed that Banco Santander " . . . for the moment, rejects the Claim, as it has done in other identical cases presented by Atty. José R. Franco-Rivera and which are presently *sub-judice." It should be noted that from said letter there is no glimpse of an ethical issue and much less than on the previous day he had filed an administrative complaint against me for possible violation of Rules 34 and 36G.* On the contrary, he leaves the door open for said Claims to be honored "depending on the final decision of the Courts . . . "[2]

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[2] He was referring to Civil Cases KAC 90-1868 and KAC 90-2010 before the Superior Court, San Juan Section, in which I

12a. Because I wanted to avoid unnecessary controversies, I decided to so inform my clients, for them to submit their claims directly. I forwarded these letters, including the one to Miguelina Muñoz-Trinidad, on or about 11 November 1991, with a copy to the Legal Division of Banco Santander (Annex VIII to the First Report on page 15 [of the Spanish version; pages 27-34 of the English translation]). Dated as of 15 November 1991, I replied to attorney Herrero's letter of 5 November 1991 (See paragraph 11 of this Motion). I deemed it necessary to forward these letters to the clients in order to keep them from thinking that in some manner I had pocketed their money, since I had their authorization to submit the Claim. The reason why I reduced the fee from 33 1/3% to 20% was that I understood that I had accomplished a part of the effort, in my opinion the most tedious one, to identify and relate the generic claim with some particular person. The part that remained to be accomplished was for me the easiest: to appear with the sworn document to physically submit the claim. Based on the (little) experience that I have indicated I had in 1991 about contingency fees, I thought that 20% was a reasonable sum (which resulted moot, because in general terms I did not receive any fees as a result of my letters of 11 November 1991).

12b. Since after my letter of 15 November 1991 to attorney Herrero I did not hear anything else from the Bank, nor did I file any Claims, and I basically ceased these operations, I believed that this episode of my professional life had ended. What I did not know was that

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was not involved nor did I have any knowledge about the same.

before attorney Herrero had written to me his letter of 5 November 1991, he already had, the day prior – 4 November 1991 – initiated the administrative complaint proceedings (First Report, on Annex I, page 1 [of both the Spanish version and the English translation]). It is not until 25 February 1992, when I receive the letter from the Solicitor General dated on the 18th of that same month (First Report, on Annex III, pages 5-6 [of the Spanish version; pages 14-15 of the English translation]) that I realize that the matter has not concluded.[3]

13. With the greatest respect for this Honorable Court, I understand that what is pointed out on page 13 of its Opinion [in Spanish] about unreasonable fees, as well as about the nature of the efforts (according to this Honorable Court, "easy" and "of a routine nature") was not the reason for attorney Herrero's administrative complaint nor was it discussed in the Solicitor General's Reports nor in mine. The reality is that the efforts were of a routine nature, if by this it is to be understood that the same steps were followed in every case. Now, easy they were not. The same did require much paperwork, travel and great responsibility in the handling of other people's monies. An office separate from mine was outfitted to handle these claims with the well-known administrative expenses, etc.

14. Also on page 13 [of the Spanish version] of its Opinion, this Honorable Court mentions the case of Mr. Carmelo Martínez-Figueroa and the letter that he sent to

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[3] On the contrary, it is the beginning of these " . . . annoying disciplinary . . . [and] . . . instructive . . . proceedings . . . "

District Collection Agency on 27 April 1992, Solicitor General's (Second) Report, Appendix I, page 1 (hereinafter "the Second Report"). I respectfully refer to Exhibits 3a and 3b of my Rejoinder. Worried about this situation after I was notified of the Opinion of 10 December 1993, I attempted to obtain a reaction from Mr. Carmelo. To those effects I attach hereto as **Exhibit 3** his Sworn Statement of 23 December 1993. It must be noted that Mr. Carmelo indicates that he did not know that his sending a copy of his letter to the Bar Association and to the Solicitor General constituted an Administrative Complaint against my person, and that had he known so, he would not have done it because such was not his intention. He indicated that I had not caused him any harm and that with my letter of 6 May 1992, (Exhibit 3a to my Rejoinder), I had clarified all his doubts. We must remember that Mr. Carmelo is blind, can not read nor write and we do not know who advised him or wrote said letter for him.

15. In its Resolution, this Honorable Court indicates that my communication "was addressed to giving an erroneous impression . . . and that, therefore, it was deceptive." Nevertheless, there is no glimpse of complaints about deceit, except as discussed in the preceding paragraph about Mr. Carmelo Martínez-Figueroa. The complainant (Atty. Ismael Herrero, Jr.) did not talk about deceit. In fact, from his letter of 5 November 1991, **Exhibit 2**, the authorization, if any, that existed for rejecting said claim does not even arise.

16. There are no complaints from the persons whose funds I claimed for them. Of the persons that I advised of the banks' refusal and how to retrieve their funds, there

was the "complaint" of Mr. Carmelo, which according to his own statement was clarified in May 1992 -the first opportunity I had to clarify it, because prior to that I had no knowledge of the situation. On the other hand, this Illustrious Court will remember that Exhibit 4a to my Rejoinder was a letter from Mrs. Sonia Santiago thanking me for my efforts " . . . because without [my] assistance [she] would have never known of the existence of the money that [I] helped [her] to recover." Obviously Mrs. Sonia did not think that my notice was deceptive, even after she learned of the source of the funds. In fact, there were no complaints of deceit from the persons for which I recovered funds even – though in my letter of liquidation I informed the source of the unclaimed funds. Neither were there complaints from those to whom I sent my letter informing them of the bank's refusal to honor the funds (nor did I receive the reduced fees). Of this last group only Mr. Carmelo complained and it was not when he received my letter, but when District Collection Agency attempted to collect. I reaffirm that I have never had any relation whatsoever with said agency nor have I ever authorized them to make collections in my name and/or on my behalf. I subsequently learned that persons who worked in my claims operation used information, without my authorization, to conduct the efforts with District Collection Agency, which I banned immediately and in writing upon learning of the same.

17. I dare request a reconsideration of the scope of the sanction imposed in the hopes that the foregoing narrative has afforded to this Honorable Court a new or different viewpoint in the instant matter. I reiterate that it has never been my intention to deceive anyone, in this or

in any other matter. In the past this Honorable Court has considered matters in extenuation and mitigation when decreeing a sanction. Respectfully, I so request.

18. I have already addressed my limited experience in the private practice of law in 1991. *In re Ramos and Ferrer*, 115 DPR 409 and *In re Cardel-Matos*, 1160 PR 1. In addition, the complainants appear to have no interest in further proceedings. They have manifested that I communicated with them to clarify the matter. *In re Ramos-Meléndez and Cabiya-Ortiz*, 120 DPR 796.

19. I had never before had disciplinary problems and, on the contrary, I believe I made a greater than the normal and ordinary contribution to the profession as member of Commissions of the Bar Association, *Pro-Bono*, the Criminal Justice Act Panel, etc. (See my "Reply to Solicitor General's Report," filed on 4 May 1992, paragraph 16). *In re Rosario*, 116 DPR 462.

20. In *Cardel-Matos, supra*, this Honorable Court expressed itself about the "*annoying* disciplinary proceedings" (emphasis added). In reality, more than annoying it is *devastating*, both spiritually and psychologically as well as financially. During the last two (2) years this entire matter has been a cause of constant worry and grief, both for myself and for my family. I feel particular grief for my mother and for my son. For my mother because since I am the oldest son, I became the *paterfamilias* when my father died and it hurts me when she suffers because of my actions. For my son, whose name is the same as mine and is an outstanding student of law at the University of Puerto Rico, graduating in May 1994. Regrettably, the

doors of the legal field have already been closed for him after the publication of this case in 93 JTS 160.

21. Different from many other cases on disciplining of lawyers, this matter (with my photograph) was prominently displayed in the written press of the Island, **Exhibit 4**, as well as over the radio and television. This not only caused me great shame but it also caused that some clients of my office learned about it before I could tell them about it. This caused that my principal client ceased to refer cases to my office and also withdrew several of the matters that I was already handling. The financial effect of this sanction on me *has already been* brutally devastating, because I have no source of income other than that produced by the private practice of law.

22. The Judgment in the instant case provided that the suspension term of six months would be computed from the date that the same became final and firm. Pursuant to the legal advise of my attorneys who filed the two previous Motions on Reconsideration, said firmness takes place once this Honorable Court issues its Mandate. For such reason I have continued to practice in those cases with pending matters. However, I have had to explain my situation to the judges in those cases, many times in open court and in front of colleagues of the profession, the Courts' staff and the general public. This has been extremely traumatic and instructive. Although most judges agree with my attorneys and have allowed me to practice, there have been some who have refused to allow my appearance, wherefore in effect in those courtrooms I have been suspended even before the mandate has been issued. There is one particular court where its

Clerk's Office returns my documents alleging that I have been suspended since 10 December 1993.

23. I pray of this Honorable High Authority that it reconsider the six (6) months' suspension and that it allow me to continue in the practice of the profession. Certainly this painful experience of more than two (2) years' duration has been extremely instructive and has made me a much more meticulous and diligent lawyer towards the profession. Furthermore, my main practice is as litigation attorney and without access to the same for six months (plus those that I have already constructively had in some courtrooms and in regard to my notarial office) an untenable financial situation would be created for my family and for my office. In the alternative, I pray that this Honorable Court consider sanctions of a different nature, such as: free legal services to the community; talks about this experience to Law Schools, the Bar Association, etc.; continued suspension of my notarial office; refund of fees to claimants; etc., that would allow me to practice the profession that I earned with so many sacrifices and which is the main means of support for my family. I assure you there will not be a second time. *In re González-González*, 119 DPR 496; *In re Rodríguez-Bonhomme*, 1193 DPR 500; *In re Santos-Vías*, 122 DPR 881.

24. Should this Honorable Court still harbor doubts about my sincerity and/or any matter narrated herein, I very respectfully request the opportunity of a hearing before a Special Commissioner to be able to go in-depth into the situations of fact of this case, through receipt of proof in support of my position.

WHEREFORE, it is very respectfully requested and prayed of this Honorable Court that on the merits of the foregoing it reconsider the scope of the sanction imposed through its Judgment of 10 December 1993.

I CERTIFY: That on this date I have forwarded a copy of this document to the Solicitor General, Department of Justice, Box 192, San Juan, Puerto Rico 00902.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on 22 February 1994.

/Sgd/ Juan M. Masini-Soler
ATTY. JUAN M. MASINI-SOLER
PENTHOUSE 1, ESQUIRE BLDG.
HATO REY, P.R. 00918-3622
TEL. 751-0447

[The Initials J.M. appear at the bottom left-hand margin of every page.]

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**- CERTIFIED -**

To be a correct translation prepared by:
/s/ Ernesto Quidgley - 5-6-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

Exhibit

--1--
J.M.

CERTIFIED TRANSLATION:

(Logo)
5-6-94

**Juan M. Masini-Soler**
**Attorney-At-Law & Notary Public**
**P.O. Box 3367**
**Old San Juan, Puerto Rico 00904**

28 October 1991

Mr. Juan J. Guiets
32 Sol Street
Ponce, P.R. 00731

Dear client:

We appreciate the trust deposited in us by authorizing us, under notarial oath, to perform the delicate and laborious task of withdrawing in your name and on your behalf certain unclaimed funds itemized as follows:

| | |
|---|---|
| Depository: Scotiabank de Puerto Rico | |
| Amount Claimed: | $444.84 |
| Less administrative expenses retained by the depository of unclaimed funds: | $ 15.03 |
| Less fees (~~33.33%~~ 23.33) agreed-upon 10% professional courtesy discount | $100.27 |
| Amount to be reimbursed: | $329.81 |

"Special Account" Check #053 (Enclosed)

We are pleased to have been of service to you in this matter and we take this opportunity to reiterate ourselves at your service for any future event.

Sincerely,

/Sgd/ J. Masini
Atty. Juan M. Masini-Soler

N/A: P.R. 1-91-51-1

**CERTIFIED** to be a correct
translation prepared by:
/s/ Ernesto Quidgley
ERNESTO QUIDGLEY 5-6-94
U.S. Certified Court Interpreter
P.L. 95-539, 28 USC 1827

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Exhibit

--2--
J.M.

(logo)
5-6-94

CERTIFIED TRANSLATION:

LAW OFFICES
**GONZALEZ-OLIVER, CORREA-CALZADA, COLLAZO-SALAZAR, HERRERO & JIMENEZ**
POST OFFICE BOX 11550
SAN JUAN, PUERTO RICO 00922-1550

W. GONZALEZ-OLIVER
M. CORREA-CALZADA
B. COLLAZO-SALAZAR
I.H. HERRERO, JR.
P.A. JIMENEZ
M.L. CORREA-MARQUEZ
I.H. HERRERO III
O.P. GOBLE
R. GUZMAN
P. RIVERA-MATOS
A. SURILLO
J.G. BAREA
F.R. FIGUEROA
S.G. GONZALEZ

TELEPHONE (809) 793-5000
BANCO SANTANDER
PUERTO RICO BLDG
1508 F.D. ROOSEVELT
AVENUE
SAN JUAN, PUERTO RICO
CABLE ADDRESS:
"COCOHER"
FAX NO. 793-5007

SANTANDER FEDERAL
SAVINGS BUILDING
ROAD NO. 2 CORNER
ROAD NO. 167
BAYAMON, PUERTO RICO
TELEPHONE (809) 798-2710
FAX NO. 798-2717

5 November 1991

Atty. Juan M. Masini-Soler
461 Ponce de León
Suite 200
Hato Rey, Puerto Rico 00917

RE: Miguelina Muñoz-Trinidad – Accounts 336-210423; 336-215873 – Banco Santander Puerto Rico, Manatí Branch, Social Security 580-46-8158

Dear Juan:

I refer to the document on Claim for Funds Under Notarial Oath in the case at caption and which was presented to the Manatí Branch of our client, Banco Santander Puerto Rico.

I regret to inform you that our client, for the moment, rejects the Claim, as it has done in other identical cases presented by Atty. José R. Franco-Rivera and which are presently *subjudice*.

Depending on what the Courts finally decide, our client will then determine the proper action.

Cordially,

/Sgd/ (Unreadable)
ISMAEL H. HERRERO, JR.

IHH/nm/A:12223046.CAR
BSPR (3)
cf: Mr. Ernesto F. Parisse
Manatí Branch (036)
Banco Santander Puerto Rico
Manatí, Puerto Rico

– CERTIFIED –
To be a correct translation prepared by:
/s/ Ernesto Quidgley – 5-6-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

Exhibit

--3--
J.M.

(logo)
5-6-94

CERTIFIED TRANSLATION:

SWORN STATEMENT

I, CARMELO MARTINEZ-FIGUEROA, of legal age, single, freeholder and resident of Isabela, Puerto Rico, under oath state:

1) That my name and other personal circumstances are as aforesaid.

2) That on 27 April 1992 I sent a letter to the collection agency called District Collection Agency, a copy of which I forwarded to the Puerto Rico Bar Association and to the Solicitor General in the Department of Justice.

3) That the only purpose of the letter sent to the Collection Agency and to the attention of Mrs. Rosa E.

Cabrera was to inform them that I did not have any debt with Atty. Juan Masini-Soler.

4) That I had made this decision because I had been subject of several collection efforts on the part of District Collection Agency.

5) That I did not know that my sending a copy to the Bar Association and to the Solicitor General constituted the filing of an administrative complaint against Atty. Juan Masini; that had I known so, I would not have done it, because such was not my intention.

6) That I have never had nor do I currently have any interest in further proceedings to be pursued in relation to what was stated in the letter of 27 April 1992.

7) That I was never caused any harm by Atty. Juan Masini.

8) That Atty. Juan Masini forwarded a letter dated 6 May 1992 whereby he notified me that at no time had he authorized District Collection Agency to collect any money in his favor; that with this letter I clarified all the doubts I had about this matter.

9) That Atty. Masini having clarified all my doubts through the letter of 6 May 1992, I understood that all of this had concluded.

10) That since I can not read nor write I requested Mr. Pedro Cordero-Martínez, who is my nephew, to serve as my witness in the instant sworn statement.

11) That all of the above-stated is the truth and I ratify its contents.

AND IN WITNESS THEREOF, I stamp my thumb-prints hereon because I can not sign and the witness that I have selected signs in my stead.

/Sgd/ Pedro A. Cordero Martinez
PEDRO CORDERO-MARTINEZ
Witness

(There appear two fingerprints)
CARMELO MARTINEZ-FIGUEROA

AFF. NO. 2,711

Sworn to before me by Mr. Carmelo Martínez-Figueroa, of the aforesaid personal circumstances, whom I personally know, who is blind and is assisted as witness by his nephew, Mr. Pedro Cordero-Martínez, whom I have identified through his Voter's Registration Card #0637016; I proceed to read the sworn statement to Mr. Carmelo and I ask the witness to also read it outloud to Mr. Carmelo, in Isabela, Puerto Rico, on 23 December 1993.

(There appears the Round
Seal of JAIME R.
BANUCHI-HERNANDEZ,
ATTORNEY-AT-LAW and
NOTARY PUBLIC)

/Sgd/ Jaime R. Banuchi-Hdez
NOTARY PUBLIC

---

– CERTIFIED –
To be a correct translation prepared by:
/s/ Ernesto Quidgley – 5-6-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

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Exhibit

--4--
J.M.

(logo)
5-6-94

CERTIFIED TRANSLATION:

**Lawyers who overstep bounds are suspended**

***EL VOCERO* DE PUERTO RICO**

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**VOL. 8 NO. 6962 SAN JUAN, P.R.**

**TUESDAY 21 DECEMBER 1993**

*Supreme Court suspends 2 lawyers*
**One charges $1 thousand for handling nuns' checks**
**By Clarence Beardsley**
**Staff Writer –**
*EL VOCERO*

(Photograph)

**ATTY. JUAN M. MASINI-SOLER**
**Former Clerk, Federal Court**

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The saying "It is better to be pale once than to blush one hundred times" turned out to be a boomerang for the former Clerk of the Federal Court, Atty. Juan M. Masini-Soler, who was recently suspended by the Supreme Court from the practice of the profession of law for a term of 6 months, after it was concluded that he incurred in solicitation of clients through deceptive letters. For the same reason and term Atty. José R. Franco-Rivera was suspended in the ruling issued on 10 December 1993.

The attorneys for two banking institutions charged these lawyers with utilizing the listings that banks publish about inactive depositors' accounts to send letters to these persons offering them their professional services. When the Solicitor General notified the complaint to the lawyers, Atty. Franco sustained that he was not violating any ethical precept whatsoever, with his opinion that the letters did not constitute an offer of his professional services.

On his part, Atty. Masini apologized for any "inconvenience that inadvertently and acting in good faith" he could have caused and requested that the controversy be brought to an end expressing that he would desist of his

collection efforts. Nevertheless, evidence was submitted to the Supreme Court to prove that after such commitment Atty. Masini sent letters to the clients charging them fees of 20% instead of the 33% originally agreed upon.

In fact, in the files of this case there appears a letter that Atty. Masini sent to Sister Tomasina Bueno, of the Sisters of Mercy and Charity, of Guaynabo, wherein he first demands from her the fee of 33%, which represented $1,197.14 out of the sum of $3,591.78 that the institution had in its inactive bank account. Later on Atty. Masini reduces said fee to 25% ($897.95) "in consideration of the Convent" and if the payment was made within a term of 15 days. But when the Convent delayed, he sent them another later demanding again from them the fee of $1,197.14.

In that letter to the nuns, Atty. Masini began with the saying "It is better to be pale once than to blush one hundred times" and further on down he expressed: "It is rather embarrassing to write this letter to you. Embarrassing for us because you are our sisters in Christ and embarrassing for you because you owe to this brother some money that should have been paid when certain services were rendered."

Another letter was sent to a depositor of a bank that appeared in a listing of inactive accounts published in the Press; wherein the bank did not accept Atty. Masini's intervention in the collection action for the client. Faced with this situation, Masini sent a notice to his client advising him that he should claim the money directly and personally from the bank, but at the same time he [Masini] was demanding from him [the client] the payment of

fees for the fruitless collection effort. The lawyer was then reducing his fee from 33 1/3% to 20%, reminding him that "without our intervention you would not have learned that those unclaimed funds belonged to you."

The opinion of the Supreme Court, issued by Associate Justice Antonio S. Negrón-García, censures both lawyers for their actions pointing out, among other things, that the same constituted "a *modus operandi* not incidental, but skillfully planned . . . for the only purpose of obtaining a profit through the unreasonable collection of one-third as fees for an action easy of itself, not controversial and of a routine nature." The Supreme Court also concluded that the supposed "legal notices" that the lawyers sent to the depositors "are no more than letters offering their services" and "induce to error." Furthermore, that the two lawyers did not inform the potential clients that they [the clients] could recover the deposited funds without the need for the services of a lawyer.

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**– CERTIFIED –**

To be a correct translation prepared by:
/s/ Ernesto Quidgley – 5-6-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
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## APPENDIX S

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

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| IN RE: | , | |
| JUAN M. MASINI-SOLER | , | CIVIL NO. 94-1064 HL |
| BAR NO. 201902 | , | CIVIL NO. 94-1065 HL |
| JOSE R. FRANCO RIVERA | , | |

x

## ORDER

(Filed Mar. 30, 1994)

Before the Court is respondent Masini-Soler's motion to stay the proceedings in this matter pending the filing of, and the resolution on a petition for certiorari before the United States Supreme Court. Respondent represents to this Court that the petition with the translated documents shall be filed with the Supreme Court not later than May 20, 1994.

In line with the foregoing, the Court shall stay the proceedings in the above captioned matter until May 30, 1994. Respondent, however, shall file a notice with this Court not later than *June 1, 1994,* certifying that the petition has been filed with the Supreme Court, with a copy (but without attachments) of the petition for certiorari.

Until further order of this Court, the referenced cases shall remain consolidated, but a ruling to sever the cases,

as requested by respondent, shall be left in abeyance pending the filing of the petition for certiorari.

**IT IS SO ORDERED.**

San Juan, Puerto Rico, March 30, 1994.

s/c ICUS pts (2)
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4/5/94

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(Seal)
5-9-94

CERTIFIED TRANSLATION:

(Logo)

Commonwealth of Puerto Rico
**GENERAL COURT OF JUSTICE**
ADMINISTRATIVE OFFICE OF THE COURTS

| | |
|---|---|
| **Atty. Mercedes M. Bauermeister** | Vela Street, Stop 35½ |
| Administrative Director of the Courts | PO Box 190917 |
| | San Juan, Puerto Rico |
| | 00919-0917 |

MEMORANDUM

No. 130 FISCAL YEAR 1993-94

FOR :All Honorable Appeals Judges, Trial Court Judges, Special Judges and General Clerks
/Sgd/ Mercedes M. Bauermeister

FROM : Mercedes M. Bauermeister
SUBJECT : SEPARATION OF ATTYS. JOSE R. ROJAS-JIMENEZ, JOSE R. FRANCO-RIVERA, JUAN M. MASINI-SOLER AND EFRAIN MATOS-VARGAS FROM THE EXERCISE OF THE LEGAL PROFESSION.
DATE : 20 December 1993

Through a Judgment of 3 December 1993, the Honorable Supreme Court decrees the indefinite separation of Atty. José R. Rojas-Jiménez from the exercise of the legal profession and orders his name striken from the rolls of the Registry of Lawyers. It further decrees, through its Judgment of 10 December 1993, the separation of Attys. José R. Franco-Rivera and Juan M. Masini-Soler for a term of six (6) months. In its Resolution of 7 December 1993, it orders the separation of Atty. Efraín Matos-Vargas from the exercise of the profession of lawyer and from his notarial office. A copy of said Judgments and Resolution is attached hereto.

The courts will take notice of this fact and will notify any departure from compliance with this order.

Enclosures

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**– CERTIFIED –**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 5-9-94
ERNESTO QUIDGLEY
U.S. Certified Court Interpreter
(PL 95-539, 28 USC 1827)

232 Upsala, College Park
San Juan, PR 00921
(809) 751-8334

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(Seal)
5-9-94

CERTIFIED TRANSLATION:

*SUPERIOR* Court
*Bayamón* Section

MEMORANDUM

For : Atty. Juan M. Masini-Soler
From : MOISES COTTO-VILLANUEVA
Clerk
/Initials/ (Unreadable)
By : M. LAUREANO
Deputy Clerk in charge of Filings

Subject : Returned Motion in Reply to "Memorandum in Support (Description of the Document) of Plaintiffs' Claim" etc.
Case No. D DP 91-3322 (505)

Parties ( Juan Giovanetti-Rosado
( VS.
( P.R. Telephone Co.

Date : 27 January 94

We are returning the enclosed documents to you for the reasons shown below:

. . .

. . .

. . .

[X] Other: It was dropped from the Computerized System because you are separated from the practice pursuant to Judgment of 10/Dec/93.

cc. Atty. _____

_____

Memorandum – Return of Documents: Stamps, etc.
A.O.C. Form 826 (rev. May 1976)

**– CERTIFIED –**

To be a correct translation prepared by:

/s/ Ernesto Quidgley 5-9-94
ERNESTO QUIDGLEY
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